(22,840 and 22,841.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 764.

WILLIAM M. BARRETT, AS PRESIDENT OF THE ADAMS EXPRESS COMPANY, &c, APPELLANT,

vs.

THE CITY OF NEW YORK, ET AL.

No. 765.

THE CITY OF NEW YORK, ET AL., APPELLANTS,

vs.

WILLIAM M. BARRETT, AS PRESIDENT OF THE ADAMS EXPRESS COMPANY, &c.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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United States Circuit Court, 1

SOUTHERN DISTRICT OF NEW YORK.

IN EQUITY.

WILLIAM M. BARRETT, as President of the Adams Express Company, individually and as a shareholder in the said Company, suing on behalf of himself and all other members and shareholders of the said Company, 2
Complainant,

vs.

THE CITY OF NEW YORK, WILLIAM J. GAYNOR, as Mayor of The City of New York, and JAMES C. CROPSEY, as Police Commissioner of The City of New York,
Defendants.

Amended Bill of Complaint.

TO THE HONORABLE THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF NEW YORK, SITTING IN EQUITY: 3

William M. Barrett, of the City of New York, in the State of New York, and a citizen of the United States and of the State of New York, as President of the Adams Express Company, an unincorporated association composed of more than

seven persons organized and existing under the laws of the State of New York, having its principal office in the said City, and the said William M. Barrett, individually and as a holder of shares and member of the said Adams Express Company, on behalf of himself and all other members and holders of shares of said Company, brings this, his amended bill of complaint, against The City of New York, a corporation of the State of New York, William J. Gaynor, as Mayor of The City of New York, and James C. Cropsey, as Police Commissioner of the said The City of New York, and thereupon your orator complains and says:

I. This is a suit of a civil nature arising under the Constitution and laws of the United States, and the amount in controversy exceeds the sum or value of two thousand dollars ($2,000), exclusive of costs or interest.

II. The Adams Express Company is an unincorporated association consisting of more than seven persons, organized and existing under and by virtue of the laws of the State of New York, and your orator is a shareholder and the President thereof. By section 1919 of the Code of Civil Procedure adopted by the Legislature of the State of New York, the said Express Company is authorized to maintain and bring suits in the name of its President upon any cause of action for or upon which all the associates may maintain such an action by reason of their interest or ownership therein, either jointly or in common. The Adams Express Company is composed of a large number of members or holders of shares or interests in the said Company, and all or nearly all of said members or holders are citizens of the United States and all have a joint ownership or interest in the subject of this suit, but they are too numerous to be joined as parties hereto, and it is impracticable, if not impossible, to bring

them and each of them before this court to join in this, your said orator's amended bill of complaint, because they are widely scattered and live in many parts of the United States, and some of them are absent from the United States. Your petitioner, therefore, as such President and member and shareholder of the said Adams Express Company, brings this suit on behalf of the said Company and on his own behalf and on behalf of all other members and shareholders of the said Company. 7

III. The defendant, The City of New York, is a municipal corporation of the State of New York, and the defendant, William J. Gaynor, is the Mayor thereof, and the defendant, James C. Cropsey, is Police Commissioner thereof; and the said William J. Gaynor, as Mayor, and James C. Cropsey, as Police Commissioner, are charged by the laws of said State, in such cases made and provided, with the enforcement of the ordinances of the said corporation, The City of New York, and are engaged in so enforcing the same. 8

IV. The Adams Express Company is now, and since its organization in the year 1854 has been, engaged in the City of New York and elsewhere in the business of interstate express as a common carrier of packages, parcels and other property between the several States under through bills of lading and at through rates. Said express business, by the necessities of commerce and the usages of those engaged in such transportation, has become known and recognized as distinct from the transportation of the large mass of freight usually carried by steamboats and railroads, and its object is to carry small and valuable packages rapidly and in such a manner as not to subject them to the risk of loss, damage or delay which would attend their transportation in company with heavy or bulky articles of commerce. The said Adams 9

10 Express Company, in the conduct of its business, receives directly from shippers daily in the City of New York many thousands of small and separate packages for carriage and delivery to consignees at points and places in other States, and receives daily in other States many thousands of like packages for delivery to consignees in the City of New York, which packages contain merchandise, money, gold and silver bullion, jewels, deeds and other documents and papers, securities and other articles of great value, and also fruits, vegetables and other perishable articles, all of which require special care in transit in the charge of
11 responsible agents and certainty and promptness of delivery. The number of interstate packages which the Adams Express Company carries to and from the City of New York averages more than seventy-five thousand daily. The said transportation of packages in interstate commerce to and from the City of New York is done by the Adams Express Company under the terms and conditions of a through bill of lading, which it duly issues in each case as the contract of carriage, and at a through rate covering all services from the moment of receipt until the moment of actual delivery to the consignee, including cartage
12 in The City of New York. It also carries bonds, money, and gold and silver bullion for the Government of the United States between New York and Washington, D. C. It transports all packages delivered to it by shippers in the custody of its own employees and agents, by its own wagons or in special railroad cars, and over railroads and by steamboats or other means of carriage specially provided by it, which instrumentalities form through routes for continuous transportation between the several States from shipper to consignee, and it delivers such packages directly to the consignees at their residences, places of business or

other designated addresses, or to connecting lines 13
in case the consignees are beyond points reached by its own lines. Liability for loss, damage, or injury to property delivered to and accepted by the said Company for interstate transportation, for which it has issued its bill of lading, is imposed by law upon it, whether such loss, damage or injury is caused by the Company during any part of the transportation or by any other carrier to which such property has been transferred for delivery.

V. The said Adams Express Company, as a common carrier, is subject to the provisions of the Act of Congress, approved February 4, 1887, en- 14
titled "An Act to regulate commerce," and the various acts amendatory thereof and supplemental thereto. By the said acts of Congress the Company is, among other things, charged with the duty of providing and furnishing vehicles and all instrumentalities and facilities for the receipt, shipment, transportation or delivery of property upon reasonable request therefor, and of establishing through routes and just and reasonable rates applicable thereto, and of filing with the Interstate Commerce Commission and publishing shedules of rates, which are subject to the approval and regulation of the said Commission. The said Express 15
Company carries on its interstate business in the United States on the lines of more than one hundred separate railroad companies, besides steamboat and stage lines; its interstate routes aggregate more than thirty-six thousand miles in length, and they extend into thirty States and the District of Columbia; it has established over the said lines through routes, and has made and filed with the Interstate Commerce Commission, and duly published, as required by law, classifications and schedules of rates applicable thereto, by which all of its interstate business is governed, and it has

duly complied with all the requirements of the Interstate Commerce Act.

VI. The said Express Company is the owner of a large number of horses and wagons and other vehicles kept and used by it in the many places in which it transacts its business. In the City of New York the said Company employs about two thousand men, and owns and uses about four hundred and fifty wagons drawn by horses, requiring the services of over four hundred drivers, besides about ninety motor vehicles, and all of these wagons and drivers are used and engaged in the interstate business of receiving, transporting and delivering packages and articles shipped to or from or through other States. The said horses, wagons and other vehicles and the drivers thereof are necessary and indispensable instrumentalities of the Company in the transaction of its said interstate business, and without such horses, wagons and vehicles, and without drivers and other operators for the same, the transaction of the interstate business of the Company in the City of New York and other large cities would be impossible. The services rendered by said wagons and drivers in collecting and delivering packages in the City of New York are invariably part of the interstate transportation and no separate charge is made therefor, but such services are included and absorbed in and covered by the through rate or charge aforesaid so duly made, filed and published in accordance with said Interstate Commerce Law.

VII. The Board of Aldermen of the City of New York, claiming to act under and by virtue of power conferred upon them by an act of the Legislature of the State of New York known as The Greater New York Charter, and particularly section 51 thereof, heretofore adopted a Code of Ordinances for the City of New York, and in and by chapter

7 thereof, among other things, provided as follows:

"Section 305. The following businesses must be duly licensed as herein provided, namely, public cartmen, truck men, hack men, cab men, express men, drivers, junk dealers, dealers in second hand articles, hawkers, peddlers, venders, ticket speculators, coal scalpers, common shows, shooting galleries, bowling alleys, billiard tables, dirt carts, exterior hoists and stands within stoop lines and under the stairs of the elevated railroad stations."

"Section 306. No person shall engage in or carry on any such business without a license therefor under a penalty of not less than two dollars, nor more than twenty-five dollars for each offense, and for the purposes of this ordinance the term person shall include any human being or lawful association of such."

"Section 307. All licenses shall be granted by authority of the Mayor and issued by the Bureau of Licenses for a term of one year from the date thereof, unless sooner suspended or revoked by the Mayor, and no person shall be licensed except a citizen of the United States or one who has regularly declared intention to become a citizen.

"The Mayor shall have power to suspend or revoke any license or permit issued under the provisions of this ordinance. The Mayor shall also have power to impose a fine of not more than five dollars or less than one dollar for any violation of the regulations herein provided, and to suspend the license pending payment of such fine, which, when collected, shall be paid into the sinking fund for the redemption of the city debt."

22 "Section 308. The annual license fee shall be as below enumerated: . . .
For each express wagon.....$5."

"Section 315. Every person driving a licensed hack, or express, shall be licensed as such driver, and every application for such license shall be indorsed, in writing, by two reputable residents of The City of New York testifying to the competence of the applicant. No owner of a licensed hack or express shall employ an unlicensed driver under a penalty of ten dollars for each and every offence."

"Section 330. Every vehicle of whatever
23 construction, kept or used for the conveyance of baggage, packages, parcels and other articles within or through The City of New York for pay, shall be deemed a public express, and the owner therof shall be deemed a public expressman, and the term expressman shall be deemed to include any common carrier of baggage, packages, parcels or other articles within or through The City of New York."

"Section 331. Every public express shall show on each outside thereof the word 'Express,' or the letters 'Exp.,' together with the
24 figures of its official number."

"Section 332. Every owner of a public express shall give a bond to The City of New York for each and every vehicle licensed in a penal sum of $100, with sufficient surety, approved by the Mayor or Chief of the Bureau of Licenses, conditioned for the safe and prompt delivery of all baggage, packages, parcels and other articles or things entrusted to the owner or driver of any such licensed express."

"Section 333. The legal rates for regular

deliveries, unless otherwise mutually agreed, shall be as follows in the city: 25

Between points within any borough—

Not more than five miles apart, each piece	$0.40
Not more than ten miles apart, each piece	55
Not more than fifteen miles apart, each piece	75

Between points in different boroughs: half the above rates in addition.

Special deliveries at rates to be mutually agreed upon."

"Section 373. All license fees received by the Bureau of Licenses shall be regularly paid over to the City Treasury, except the license fees received from hackmen, dealers in junk and second-hand articles, and for stands within stoop-lines, which shall be paid into the Sinking Funds for the Redemption of the City Debt." 26

"Section 374. The Mayor shall have power to appoint inspectors in the Bureau of Licenses to see that the provisions of this ordinance are fully and properly complied with; and all licensed vehicles and places of business shall be regularly inspected, and the result of such inspection shall be endorsed on the official license therefor, together with the date of inspection and the signature of the inspector, and all inspections shall be regularly reported to the Bureau of Licenses." 27

"Section 375. Every licensee shall have the official license and exhibit the same upon the demand of any person; and shall report within three days to the Bureau of Licenses any change of residence or place of business; and shall at all times perform the public duties

of the business licensed when called upon so to do, if not actually unable."

"Section 379. Except as hereinbefore otherwise provided, no person shall violate any of the regulations of this ordinance under a penalty of ten dollars for each offense. No such violation shall be continued under a penalty of ten dollars, for each day so continued. Any person engaging in or carrying on any business herein regulated without a license therefor, or any person violating any of the regulations of this ordinance, upon conviction thereof by any Magistrate, either upon confession of the party or competent testimony, may be fined not more than ten dollars for each offense, and in default of payment of such fine may be committed to prison by such Magistrate until the same be paid; but such imprisonment shall not exceed ten days."

The Code of Ordinances containing the above was adopted by the Board of Aldermen October 30, 1906, and approved by the Mayor, November 8, 1906, and as so approved the said ordinances are still in full force and effect, except that by ordinance adopted June 15, 1909, and approved by the Mayor June 29, 1909, sections 315 and 379 were amended to read as above recited.

As will further appear by reference to the Code of Ordinances so adopted by the Board of Aldermen of The City of New York and particularly chapter 12, sections 435 to 475, inclusive, other ordinances have been adopted under and by virtue of section 50 of the Greater New York Charter for the purpose of regulating the use of the streets of the City by wagons and vehicles. Such ordinances regulate the use of the streets and the character and speed of vehicles, but none of such ordinances requires

any licenses or the payment of license fees by those 31
using the streets, and all of said ordinances are general and apply to every wagon which is or may be used for or adapted to the transportation of baggage or merchandise upon the streets of the City, and said ordinances so regulating the use of the streets apply impartially and without discrimination to every business conducted in the City.

There are many thousands of wagons and vehicles employed in other businesses than express which use the streets of the City in the same manner as the wagons and vehicles of the Adams Express Company and other similar express companies, but which other wagons and vehicles and the drivers 32
thereof are not required to be licensed. The number of vehicles belonging to interstate express companies and engaged in interstate transportation constitutes a small percentage of the total number of wagons or vehicles using the streets in The City, and the greater part of these other wagons and vehicles and their drivers are not licensed nor are the businesses in which they are used licensed nor are they subjected to the payment of any license fees.

VIII. In the conduct of the interstate business of the Adams Express Company in the City of New York, all shipments between the said City and 33
points north, south and west thereof, are made by the said Company by way of Jersey City in the State of New Jersey over interstate railroads running through the State of New Jersey and other States, and are transported by the said Company in the immediate custody of its own agents or employees in railroad cars engaged in interstate commerce and specially provided for that purpose. All such shipments are necessarily transported in the said wagons or other vehicles by ferry between the cities of New York and Jersey City, and are then and there transferred in transit at Jersey City from

or to said railroad cars and the wagons or other vehicles of the said Express Company. All of said shipments addressed to consignees in the City of New York south of Fifty-ninth Street are delivered directly to the consignees in such wagons or vehicles without further transfer, and without being mingled with any articles transported wholly within the City or State of New York. Shipments to consignees north of Fifty-ninth Street are transferred in transit to other wagons or vehicles of the Company for delivery, or to connecting lines for points in the northerly part of said City beyond the delivery routes of the Company. All interstate shipments from the City of New York to points reached by way of Jersey City, as aforesaid, are collected in said wagons or other vehicles of the Company and transported to the nearest district offices of the Company in the said City of New York, and are there transferred in transit to wagons or other vehicles of the Company and transported therein by ferry to Jersey City, and thence in special railroad cars are carried by the Company to their respective places of destinations in the immediate custody of the agents or messengers of the Company, as aforesaid. The wagons and other vehicles of the Adams Express Company engaged in the said traffic between New York and New Jersey, when not actually in use, are kept in the stables of the Company in Jersey City.

All interstate shipments between the City of New York and points east thereof are made by the Company by way of the New York, New Haven & Hartford Railroad, an interstate railroad, running through the States of New York, Connecticut, Rhode Island and Massachusetts, in the immediate custody of agents or messengers of the said Express Company, and in railroad cars engaged in interstate traffic and specially provided for that

purpose. All such easterly interstate shipments 37
are necessarily transferred in transit at the terminus of the said railroad in the City of New York from and to the said cars and wagons or other vehicles of the Express Company, and all of such shipments addressed to consignees in the City of New York south of Fifty-ninth Street are delivered without further transfer. Shipments addressed to consignees north of Fifty-ninth Street are transferred in transit to other wagons or vehicles of the Company for delivery, or to connecting lines for points in the northerly part of said city beyond the delivery routes of the Company. All shipments from the City of New York to points reached 38
by the said New York, New Haven & Hartford Railroad are collected in wagons or other vehicles of the Express Company and transferred to the nearest district office of the Company in the said City, and are there transferred in transit to wagons or other vehicles of the Company and transported to the terminus of the said railroad in said City, and thence are carried by the Company in special railroad cars to their respective places of destination in the custody of the agents or employees of the Company, as aforesaid. All packages transported by the Company between the said City of New York 39
and points in other States are carried by it on through bills of lading and at single and indivisible through rates established by it, according to the schedules filed by it with the Interstate Commerce Commission and published, as required by law, and said bills of lading are executed by its said drivers or agents on its behalf, being thereunto duly authorized. The transfers in transit from and to railroad cars, wagons and other means of transportation as aforesaid, are necessary and unavoidable in the transportation and delivery of interstate packages by the Express Company, and no separate

40 charge is made for such transfers in transit or for the service of the said wagons or other vehicles in carrying such packages within or through the City of New York. The collection, transfer and delivery by means of the several vehicles, as aforesaid, taken together constitute through routes for continuous interstate transportation at single indivisible through rates on through bills of lading.

For the convenience of its interstate customers and as auxiliary to its business of interstate transportation, the Adams Express Company receives packages for transportation wholly within the City of New York, or between the said City and points
41 on the said New York, New Haven & Hartford Railroad in the State of New York. It is impossible to segregate such domestic transportation from the aforesaid interstate transportation as conducted by the company, and such domestic shipments are received and carried in the vehicles of the Company which are engaged in interstate transportation. The whole number of domestic or intrastate packages so carried by the said Company in the City of New York daily is less than one per cent. of its interstate traffic, and the carrying of such domestic shipments, separate and apart from the said interstate business, would be neither practicable nor profitable to Company.

42 Although the Adams Express Company has been employing drivers and using wagons in the streets of the City of New York in the course of the conduct by it of its interstate business during all the period hereinabove alleged, that is, for over fifty years, it has never been compelled by any city officials acting under any statute, ordinance or otherwise, to take out a license or licenses for the conduct of its interstate business, or to employ only licensed drivers for its wagons and vehicles employed in interstate commerce, or to conform to any tariff of charges or rates prescribed by any

state statute or municipal ordinance, and its 43
wagons and drivers employed by it and engaged in its interstate business have never been licensed in the City of New York. For several years last past, the Adams Express Company, under and by virtue of an arrangement made by it with the Bureau of Licenses of the City of New York, has taken out licenses for wagons and drivers to the amount of about forty per annum and paid license fees thereon, and such number was agreed upon with said Bureau of Licenses as representing the domestic business actually done within said City and not its interstate business, and the company has at all times conformed to the ordinances of the City of 44
New York in respect of its domestic business, notwithstanding the fact that such domestic business was conducted by it as an inseparable part and auxiliary of its interstate business.

At no time prior to the dates and occurrences hereinafter alleged has any claim or demand been made on behalf of the City of New York that the Adams Express Company and other similar interstate carriers could be compelled to take out licenses for the conduct of their interstate express business or the use of their wagons or drivers engaged in such interstate business or to pay license fees. Nor has it been heretofore claimed or asserted 45
by any officials of the City charged with the enforcement of the ordinances of the Board of Aldermen that said Adams Express Company and other similar companies engaged in interstate transportation were required to take out licenses or to pay license fees, as aforesaid, until the claim, demand and threats hereinafter alleged.

In the year 1902, as your orator is informed and believes, and therefore alleges, the question of the power of the Board of Aldermen of The City of New York to compel express companies engaged in interstate commerce to take out licenses for

46 themselves or their drivers was submitted to the Corporation Counsel of the City, by the Chief of the Bureau of Licenses, and the Corporation Counsel, Mr. George L. Rives, rendered an opinion, in which, among other things, he stated, as follows:

> "It seems to me that the imposition of a license fee and the prescription of rates, as far as they apply to an expressman, who transports packages or other articles from Jersey City, or from any other point without the State, to the City, or through the City, would be an attempt to regulate interstate commerce and would, therefore, be unauthor-
47 ized. It has been decided by the Supreme Court of the United States and by the Court of Appeals of this State, that in the case of interstate transportation the Legislature cannot prescribe the charge to be made for even that part of the transportation which is to be performed within the State, (*Wabash R. R. Co.* v. *Ill.*, 118 U. S., 557; *Peo. ex rel. Pa. R. R. Co.* v. *Knight*, 171 N. Y., 357)."

The officials of The City of New York thereafter acquiesced in said opinion of the Corporation Counsel, and until the dates and occurrences hereinafter averred, made no demand that the Adams Express
48 Company or other similar interstate carriers or their drivers should be licensed.

IX. On or about the 27th day of October, 1910, a large number of drivers, wagon helpers and other employees of the said Adams Express Company engaged in receiving, delivering and handling packages in the City of New York, left its service without notice and without having made any demand upon the Company of any kind whatever, and continued to absent themselves from its service, having been induced thereto, as your orator is informed and verily believes, by the interference of other persons not employed by or in the service

of the Company, by threats and violent means of intimidation and by their inability to secure due police protection. For the transaction of its interstate business it, thereupon, became necessary for the Company to employ and seek to employ new drivers for its wagons. In like manner, drivers and other employees of other express companies in the City of New York engaged in interstate commerce left the service of such companies and continued to absent themselves from such service, and it became necessary for such other companies to employ and seek to employ new drivers for their wagons. The new drivers and other employees of the Adams Express Company at work upon its wagons engaged solely in interstate traffic in the City of New York have been violently assaulted by riotous mobs, and the said wagons in some cases have been greatly damaged, so that for several weeks the interstate business of the said Company was seriously interrupted and could not be carried on without the protection of the police of the City of New York.

X. Your orator further alleges on information and belief that the defendants, William J. Gaynor, as Mayor, and James C. Cropsey, as Police Commissioner, of The City of New York, have caused the arrest in the Borough of Manhattan, in the City of New York, of an unlicensed driver of the Adams Express Company engaged in driving a wagon of the said Company used only in interstate transportation, namely, in carrying merchandise in transit from Jersey City, New Jersey, by way of steamboat to Brooklyn and thence by wagon to the consignee in the Borough of Manhattan in the said city, on through bills of lading; that at the time of said arrest, the said wagon was conspicuously marked with placards containing the following words, to wit: "This wagon carries interstate commerce traffic only"; that the said defendants, the

52 Mayor and Police Commissioner aforesaid, have threatened to arrest other unlicensed drivers of the said Adams Express Company driving its wagons engaged in interstate traffic and to enforce said ordinances above set forth against the Company and all its drivers; that they have caused the seizure and impounding of wagons of the said Company engaged in interstate traffic on the ground that the same were not licensed according to the ordinances above quoted, and have seized and impounded their contents, being interstate shipments, and that they have threatened to seize and impound other wagons, claiming that such unlicensed employees
53 in driving the said wagons violate the said ordinances, and that the said unlicensed wagons are used in violation of the said ordinances, notwithstanding that such employees and the wagons driven by them are engaged in interstate transportation.

Your orator further alleges that such arrests of drivers of the said Adams Express Company, as made and threatened, and the seizure and impounding of its wagons engaged in interstate traffic, will wholly prevent it from carrying on its interstate business and from performing its duty as a common carrier as required by the said Acts of Con-
54 gress, and that such acts are and such threatened acts would be an unlawful interference with the business and property of the Company as a common carrier engaged in interstate commerce, and will and would inflict irreparable injury upon it to an extent which it will be impossible to accurately estimate or ascertain.

Your orator further alleges that the value of its said business in the City of New York is more than the sum of ten thousand dollars per day; that the injury to which the said Adams Express Company will be subjected by such threatened arrests and the consequent interference with its business will

be more than ten thousand dollars per day in loss 55
of charges on interstate shipments, and that all of the above alleged acts and doings of the defendants are contrary to equity and good conscience and tend to the manifest wrong, injury and oppression of the Company and of your orator in the premises, and the Company and your orator are without any sufficient or adequate remedy at law in the matters aforesaid.

Forasmuch, therefore, as your orator is without remedy in the premises, except in a court of equity, and to the end that the said defendants named, and each and every of them may full, true and perfect answer make to this your orator's amended bill 56
of complaint, but not under oath, the answer under oath of each and every of them being hereby expressly waived, and that the said defendants and each of them, their agents, servants, officers and subordinates, and each and every of them, be restrained and enjoined from enforcing the said ordinances against the said Adams Express Company, its wagons, drivers and employees, and demanding licenses therefor, and from arresting its drivers or causing them to be arrested, and from denying police protection to the drivers and wagons of the Company for not complying with the said ordinances, and from otherwise interfering with the 57
said Adams Express Company, its wagons, drivers and employees engaged in interstate transportation, and that your orator may have such other and further relief as shall be just:

May it please your Honors to grant to your orator an interlocutory injunction pending the final hearing of this cause, whereby the said defendants, their agents, servants, officers and subordinates, and each and every of them, may thereby be ordered and commanded to refrain, and be thereby restrained and enjoined as hereinbefore prayed, and

58 that upon final hearing the said injunction be made perpetual.

May it please your Honors to grant to your orator a writ of subpœna of the United States of America, directed to the said defendants and each of them, commanding them on a day certain to appear and answer unto this amended bill of complaint and to abide by and perform such order and decree in the premises as to the court shall seem proper.

And your orator will ever pray, etc.

GUTHRIE, BANGS & VAN SINDEREN,
Solicitors for the Complainant,
59 44 Wall Street,
New York City.

WILLIAM D. GUTHRIE,
FRANCIS S. BANGS,
Of Counsel.

UNITED STATES OF AMERICA,
Southern District of New York, } ss.:

On this 30th day of November, 1910, before me personally appeared William M. Barrett, the complainant above named, who, being by me duly sworn, says that he has read the foregoing amended bill of complaint and knows the contents thereof,
60 and that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

(Sgd.) WILLIAM M. BARRETT.

Subscribed and sworn to before me this 30th day of November, 1910.

THOMAS C. CURTIS, Jr.,
[SEAL.] Notary Public,
New York County, N. Y.

CIRCUIT COURT OF THE UNITED STATES, 61
FOR THE SOUTHERN DISTRICT OF NEW YORK.

WILLIAM M. BARRETT, as President of the Adams Express Company, individually and as a shareholder in said Company, suing on behalf of himself and all other members and shareholders of said Company, Complainant, vs. THE CITY OF NEW YORK, WILLIAM J. GAYNOR, as Mayor of the City of New York, and JAMES C. CROPSEY, as Police Commissioner of the City of New York, Defendants.	Answer to Amended Bill of Complaint. 62

The joint and several answers of the defendants herein, The City of New York, William J. Gaynor, as Mayor of the City of New York, and James C. Cropsey, as Police Commissioner of the said City of New York, to the amended bill of complaint herein: 63

The above-named defendants now and at all times hereafter saving and reserving unto themselves and each of them all benefit and advantage of exception which can or may be had or taken to the many uncertainties and insufficiencies in the said amended bill of complaint contained, for answer thereto or unto so much and such parts thereof as they are advised is or are material or necessary for them to make answer unto, answering say:

64 FIRST. Defendants admit the allegations contained in paragraphs numbered I, II and III of said amended bill of complaint herein.

SECOND. Defendants do not know and are not informed save by said amended bill of complaint, as to the truth of any of the matters or things alleged in paragraph numbered IV of said amended bill of complaint herein and pray that if the same are material complainant may be required to make full proof thereof, except that defendants admit and allege that said Adams Express Company is now and for many years has been engaged in the express business in the city of New York and that
65 in the conduct of its said business it receives directly from shippers daily in the city of New York many thousands of packages for carriage and delivery to consignees at various points both in the state of New York and in other states and likewise receives daily at various places many thousands of packages for delivery to consignees in the city of New York.

THIRD. Defendants do not know and are not informed, save by said amended bill of complaint herein, as to the truth of any matter alleged in paragraph numbered V of said amended bill of complaint herein and pray that complainant may be required to make full proof thereof if the same
66 is material.

FOURTH. Defendants admit and allege that said Adams Express Company employs and uses in the City of New York about four hundred and fifty (450) wagons drawn by horses and employs in connection therewith over four hundred (400) drivers and that such wagons and drivers are necessary instrumentalities in the transaction of complainant's express business in the city of New York, as alleged in paragraph numbered VI of said amended bill of complaint herein, but defendants do not know and are not informed, save by said

amended bill of complaint herein as to the truth 67
of any other matter or thing alleged in said paragraph numbered VI of said amended bill of complaint and pray that complainant may be required to make full proof thereof if the same is deemed material.

FIFTH. Defendants admit that the Board of Aldermen of the City of New York heretofore adopted a code of ordinances for the City of New York as alleged in Paragraph VII of said amended bill of complaint herein, and that said code of ordinances, among other things, provided as stated in said amended bill of complaint herein, Paragraph VII thereof. But said provisions, as set forth in said 68
amended bill of complaint herein, are not a full and complete statement of all of the provisions of said code of ordinances, a full, true and complete statement whereof will be found in the 1910 edition of Cosby's Code of Ordinances to which reference is made for greater certainty. Save as herein admitted, defendants have no knowledge of any of the other matters or things alleged in said paragraph numbered VII of said amended bill of complaint, and pray that complainant may be required to make full proof thereof, if the same is deemed material.

SIXTH. Defendants have no knowledge and are not informed, save by said amended bill of com- 69
plaint herein, as to the truth of any of the matters alleged in paragraph numbered VIII in said amended bill of complaint herein, and pray that complainant may be required to make full proof thereof, if the same is deemed material, except that defendants admit and allege that complainant has never been required to conform to any tariff of charges or rates prescribed by any municipal ordinance of the City of New York as to any of complainant's interstate business; and except that defendants, upon information and belief, deny that

any contract or arrangement of any kind was made between said Adams Express Company and the Bureau of Licenses of the City of New York by which a specified number of licenses was agreed upon as representing the domestic business done within said City of New York, as alleged in said amended bill of complaint or otherwise.

SEVENTH. Defendants have no knowledge of any of the matters or things alleged in paragraph numbered IX of said amended bill of complaint herein, and pray that complainant may be required to make full proof thereof, if the same is deemed material, except that defendants deny that said Adams Express Company was unable to secure due police protection in the conduct of its business within the city, but on the contrary defendants aver that extra and all reasonable police protection has been at all times afforded to said Adams Express Company within the city.

EIGHTH. Defendants admit that one or more unlicensed drivers of unlicensed wagons of the said Adams Express Company have been heretofore arrested in the City of New York for violation of said ordinances hereinbefore referred to, and that defendants intend to enforce the said ordinances against said Adams Express Company and its drivers as well as all other expressmen doing business within the city in a due, orderly and lawful way, and that defendants claim and allege that said ordinances apply to the drivers and wagons of said Adams Express Company notwithstanding the fact that such drivers and wagons may be engaged in transporting interstate shipments; but defendants deny that they have seized and impounded or threatened to seize and impound wagons of said Adams Express Company and the contents thereof, except that upon the arrest of the drivers hereinbefore referred to the wagons driven by said drivers were removed from the city streets to a place of

safety and there kept until same were delivered to 73
and removed by duly authorized persons acting for said Adams Express Company, to whom the same were delivered upon demand. Defendants admit that they intend to prevent by all lawful means the use of unlicensed express wagons within the city and if necessary to that end they intend to and will remove said unlicensed wagons from the streets of the city to a place of safety where the same with their contents will be safely kept to be returned upon demand to said Adams Express Company or its duly authorized representative. Defendants further deny that the threatened enforcement of said ordinances will prevent said Adams Express Com- 74
pany from carrying on its interstate business or from performing its duty as a common carrier, or that such acts and threatened acts are or would be an unlawful interference with interstate commerce, or with the business and property of said Adams Express Company, or that the enforcement of such ordinances will or would inflict irreparable injury or any injury upon said Adams Express Company. Save as hereinabove expressly admitted or denied, defendants have no knowledge of the truth of any other matter or thing alleged in said paragraph X of said amended bill of complaint herein, and pray that complainant may be required 75
to make full proof thereof, if the same is deemed material.

NINTH. Defendants deny that they or either of them have in any way trespassed upon the rights of complainant as alleged in said amended bill of complaint or otherwise, and deny that complainant is entitled to any relief whatever, or any part of the relief in said amended bill of complaint demanded, all of which matters and things these defendants are ready and willing to prove as this honorable court shall direct, and these defendants pray to be

76 hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

ARCHIBALD R. WATSON,
Corporation Counsel,
Solicitor for Defendants,
Hall of Records,
Borough of Manhattan,
New York City.

WM. B. HALE,
Counsel for Defendants,
40 Wall Street,
New York City.

77 UNITED STATES OF AMERICA,
State of New York,
City and County of New York. } ss.:

JAMES C. CROPSEY, being first duly sworn, deposes and says: I am one of the defendants above named. I have read the foregoing answer and know the contents thereof, and the same is true of my own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

JAMES C. CROPSEY.

Subscribed and sworn to before me this 4th day of
78 January, 1911.

SAMUEL P. DUBOIS,
Notary Public, Queens Co.,
Cert. filed in N. Y. Co.
Register No. 2164.

UNITED STATES CIRCUIT COURT, 79

SOUTHERN DISTRICT OF NEW YORK.

WILLIAM M. BARRETT, as President of the Adams Express Company, individually and as a shareholder in said Company, suing on behalf of himself and all other members and shareholders of said Company,

Complainant,

AGAINST

THE CITY OF NEW YORK, WILLIAM J. GAYNOR, as Mayor of The City of New York, and JAMES C. CROPSEY, as Police Commissioner of The City of New York,

Defendants.

Replication. 80

This replicant, William M. Barrett, as President of the Adams Express Company, individually and as a shareholder in said Company, suing on behalf of himself and all other members and shareholders 81 of said Company, saving and reserving to himself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendants, for replication thereunto saith that he doth and will aver, maintain, and prove his said bill to be true, certain, and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive, and insufficient in law to be replied unto by this replicant; without that, that any other mat-

82 ter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things this replicant is ready to aver, maintain, and prove as this Honorable Court shall direct, and humbly prays as in and by his said bill he hath already prayed.

New York, January 5th, 1911.

GUTHRIE, BANGS & VAN SINDEREN,
Solicitors for Complainant,
44 Wall Street,
Borough of Manhattan,
New York City.

83

WILLIAM D. GUTHRIE,
Counsel.

84

CIRCUIT COURT OF THE UNITED STATES, 85

SOUTHERN DISTRICT OF NEW YORK.

WILLIAM M. BARRETT, as President of the Adams Express Company, individually and as a shareholder in said Company, suing on behalf of himself and all other members and shareholders of said Company,

Complainant,

vs.

THE CITY OF NEW YORK, WILLIAM J. GAYNOR, as Mayor of The City of New York, and JAMES C. CROPSEY, as Police Commissioner of The City of New York,

Defendants.

In Equity. 86

SIR:

NOTICE IS HEREBY GIVEN, that we shall proceed to take proofs for final hearing on the part of the complainant under the 67th Rule of the Supreme Court for courts in equity, as amended, or in accordance with the statutes in such case made and provided, and in pursuance of the rules and practice of this Court, before John A. Shields, Esq., an examiner of this court, at his office in the Post Office Building, Borough of Manhattan, City of New York, on the 11th day of January, 1911, at 2:30 o'clock in the afternoon. 87

You are invited to attend and cross-examine any witnesses produced. The examination will be ad-

88 journed from day to day, and to such time and place as may be required, without further notice.

Dated, New York, January 7, 1911.

GUTHRIE, BANGS & VAN SINDEREN,
Solicitors for Complainant,
Office and Post Office Address,
44 Wall Street,
New York City.

To ARCHIBALD R. WATSON, Esq.,
Solicitor for Defendants,
Hall of Records,
New York City.

89 Ordered accordingly.

JOHN A. SHIELDS,
Standing Examiner.

90

UNITED STATES CIRCUIT COURT, 91

SOUTHERN DISTRICT OF NEW YORK.

WILLIAM M. BARRETT, as president of the Adams Express Company, individually and as a shareholder in said company, suing on behalf of himself and all other members and shareholders of said company,

Complainant,

AGAINST

THE CITY OF NEW YORK, WILLIAM J. GAYNOR, as Mayor of the City of New York, and JAMES C. CROPSEY, as Police Commissioner of the City of New York,

Defendants.

In Equity. 92

Testimony on Final Hearing.

Met pursuant to due notice before JOHN A SHIELDS, Esq., at his office in the Post Office Building, New York City, on Wednesday, January 11th, 1911, at 2.30 P. M. 93

APPEARANCES:

WILLIAM D. GUTHRIE, Esq., and BERNARD HERSHKOPF, Esq., for the Complainant.

WILLIAM B. HALE, Esq., and A. C. WEIL, Esq., for the Defendants.

94 William M. Barrett.

WILLIAM M. BARRETT, called and sworn as a witness on behalf of complainant, testified as follows:

DIRECT-EXAMINATION BY MR. GUTHRIE:

Q. 1. Will you please state your name, your age, your residence and occupation? A. William M. Barrett; 52 years; residence, New York City; president, Adams Express Company.

Q. 2. How long have you been connected with the Adams Express Company? A. Since 1874.

Q. 3. Will you state briefly in what capacities and to what extent you are familiar with the prop-
95 erty and business of the Adams Express Company? A. Well, I entered the service of Adams Express Company when I was about 16 years of age, and I have occupied the various positions in the different grades from a clerkship to my present position.

Q. 4. In what places have you been so engaged? A. I entered the service in 1874 at Cincinnati, and remained there until 1896 when I was transferred. Before I left Cincinnati I was what was called the junior member of the board of managers, and resident member of the board of managers of the West, and had charge of the supervision of the so-called
96 Western department, and more particularly the southern division of the Western department. In 1896 I was transferred to Philadelphia with supervision of the then called Pennsylvania department, now called the Eastern department of our company. In 1907 I was transferred to New York as vice-president, with supervision—with the immediate supervision, and I had charge of the business of our company all east of Pittsburg, which included the New England department of our company, and embraces the territory all east of New York.

Q. 5. Are you familiar with the various branches and routes of the Adams Express Company and the property which it owns? A. I am.

Q. 6. In what business is the Adams Express Company engaged at the present time? A. In the express business.

Q. 7. And how long has it been engaged in what is known as the express business? A. Since 1854.

Q. 8. Will you briefly describe the nature of such business? A. The Adams Express Company is a common carrier, and is engaged in collecting, transporting and delivering—partly by means of 98
railroads and steamboat lines—of money, bonds, jewelry, live stock, valuable packages, perishable matter, and it uses the instrumentalities of railroads by employing special express cars on passenger trains or exclusive express trains which maintain passenger train schedule between commercial centers.

Q. 9. What is the difference in respect of the carriage of packages between railroads and steamboats on the one hand and express companies on the other? A. The express companies maintain supervision and custody from the time of the receipt of the shipment until its delivery. It is always under 99
the care and custody of an employee of the company from the moment of its receipt until its delivery, whether it is on the wagons or in the offices or in the cars on the railroads or in the offices of the destination prior to delivery. The railroad companies do not attempt to transport small and valuable shipments; they have no organization to handle such business, and would not accept it; they have no terminal—so-called terminal pick-up and delivery service; their business is brought to them, loaded in cars, and is only under the supervision of the so-called train crew, which would consist of

the engineer and conductor and fireman and brakesmen.

Q. 10. In the shipment of packages by express over railroads or steamboat routes, what is the custom invariably or otherwise of the express companies in regard to the goods being accompanied by messengers or agents of the express companies? A. The custom is absolutely that they should always be in charge of an employee of the express company.

Q. 11. So that this custom of having an em-
101 ployee of the express company accompany the shipments, whether by railroad or steamboat, or otherwise, is invariable? A. Absolutely so.

Q. 12. Over how many lines of steam railroads in the United States does the Adams Express Company conduct its business? A. 94.

Q. 13. And to what extent is the business of the Adams Express Company interstate, or the carriage of packages from one state to another?

Mr. Hale: I object to that, unless limited to transportation from the State of New York to other states, as irrelevant and immaterial.

A. From New York to——

Q. 14. Anything in the United States? A.
102 From Boston east—Colorado; Denver, Colorado; east and west.

Q. 15. And how many states does that cover? A. 31 states.

Q. 16. Have you any data to show to what extent or what percentage of your whole business is interstate as distinguished from intra-state? A. We could prepare that.

Q. 17. But you have not got it now? A. No.

Q. 18. Over how many miles does the company operate by steam railway? A. 32,994 miles is the

total mileage of Adams Express Company steam railways.

Q. 19. Have you prepared a table or statement showing the various railroads in the United States over which the Adams Express Company operates its express business? A. I have.

Q. 20. And is the paper which I now produce the table or statement which you have thus prepared? A. It is.

Q. 21. And is that to the best of your knowledge and belief an accurate statement of the names of railroads over which the Adams Express Company 104
operates its express business and the number of miles of such railroads? A. It is.

Mr. Guthrie: I offer that in evidence.

Mr. Hale: Objected to as incompetent, irrelevant and immaterial.

Paper referred to marked Complainant's Exhibit No. 1, J. A. S., Ex'r., January 11th, 1911.

Q. 22. Does the Adams Express Company also operate its express business over electric lines of railway? A. It does.

Q. 23. Over how many such lines does it so operate? A. 13.

Q. 24. And they represent a total mileage of how 105
much? A. 245.

Q. 25. Have you prepared a statement showing the names of such electric lines, where located and the number of miles? A. I have.

Q. 26. And is the statement which I now produce a true statement to the best of your knowledge and belief of such electric lines and the mileage? A. It is.

Q. 27. Does your company also operate over steamboat lines? A. It does.

106 William M. Barrett.

Q. 28. Of how many separate companies or concerns? A. 20.

Q. 29. And approximately how many miles of service does that represent? A. 3,304.

Q. 30. And is the paper which I now produce a true statement of the names of the various steamboat lines and of the mileage, to the best of your knowledge and belief? A. It is.

Mr. Guthrie: I offer that in evidence.

Mr. Hale: Same objection.

Paper referred to marked Complainant's
107 Exhibit No. 2, J. A. S., Ex'r., January 11th, 1911.

Q. 31. Does the Adams Express Company also operate its express business over stage and wagon lines? A. It does.

Q. 32. And how many such stage or wagon lines? A. 15.

Q. 33. Covering how many miles of route? A. 73.

Q. 34. Is the statement which I now produce a correct statement of the names of the stage and wagon lines and the mileage over which the Adams Express Company operates its express business? A. It is.

Mr. Guthrie: I offer that in evidence.

108 Mr. Hale: The same objection.

Paper referred to marked Complainant's Exhibit No. 3, J. A. S., Ex'r., January 11th, 1911.

Q. 35. Have you prepared a summary or tabulation showing the mileage by States and Territories operated by the Adams Express Company in its express business as of December 31st, 1910, showing separately the names of the states or territories, the steam roads and mileage, the electric roads, steamboat lines and stage and wagon roads? A. I have.

Q. 36. And is the paper which I now produce a correct summary or tabulation of such roads and routes? A. It is.

Q. 37. These papers introduced in evidence appear to be as of December 31st, 1910. Do they represent the condition as of to-day? A. Substantially so; yes, I would say.

Mr. Guthrie: I offer that summary or tabulation in evidence.

Mr. Hale: Same objection.

Paper referred to marked Complainant's Exhibit No. 4, J. A. S., Ex'r., January 11th, 1911. 110

Q. 38. Can you state approximately the number of packages handled daily by the Adams Express Company in the City of New York, representing interstate shipments, either from the City to some point outside of the State of New York, or from some point outside of the State of New York to the City of New York? A. I can.

Q. 39. And what is the average number of packages so handled? A. At least 50,000.

Q. 40. And does this number increase at certain periods of the year? A. It does.

Q. 41. And particularly at what periods? A. Around the Christmas holidays. 111

Q. 42. And does the number then very largely increase? A. Very largely.

Q. 43. Are you able to give us an approximation of the number of packages handled by the Adams Express Company yearly in its business? A. I am.

Q. 44. About how many packages does it handle yearly in its business? A. I would have to refer to that statement. (Referring) Exclusive of money and valuables about 72,000,000 pieces.

Q. 45. Per annum? A. Per annum.

Q. 46. How many employees has the Adams Express Company engaged in interstate commerce?

Mr. Hale: Objected to as incompetent, irrelevant, immaterial, as calling for a conclusion of the witness, and as not limited to the business transacted in the City of New York.

A. (Referring) 18,038.

Q. 47. And of that number of employees how many are employed in the State of New York? A. Over 2,000.

Q. 48. Have you prepared a statement showing in detail the positions occupied by these 18,000 employees so engaged in the business of the company throughout the United States and the 2,000 engaged in New York, or the New York department? A. I have.

Q. 49. Is the paper which you now produce a tabulation or summary of such employees? A. It is.

Q. 50. And to the best of your knowledge and belief, is it substantially correct? A. It is.

Mr. Guthrie: I offer that in evidence.

Mr. Hale: Objected to as irrelevant, incompetent and immaterial.

Paper referred to marked Complainant's Exhibit No. 5, J. A. S., Ex'r, January 11th, 1911.

Q. 51. Will you please state as nearly as you can the amount of capital invested in the plant, wagons, facilities and real estate used by the Adams Express Company in its business?

Mr. Hale: Objected to as wholly irrelevant to the issue.

A. About seven million dollars.

Q. 52. Will you please state how your business is conducted in the City of New York in respect to the receipt or collection of packages to be carried by your company and the delivery of packages received from other States? A. We have three ter-

minals in New York City, including, of course, Jersey City and Weehawken and 48th Street Grand Central Station, and we also maintain approximately over 150 receiving offices, together with their organized and equipped force to receive and deliver freight. We have a number of wagons and automobiles; all of them are provided with drivers and helpers, and practically all of New York City is patrolled by our wagons in the collection and delivery of parcels and freight.

Q. 53. What are the duties and functions of your drivers and helpers? A. Our drivers and helpers 116
are really collection and delivery agents. Before being employed we make a rigid investigation as to their antecedents, their responsibility and previous employment, and if they pass the scrutiny of that investigation (it depends upon their age) some are appointed maybe as helpers, or if old enough and intelligent enough, as drivers. They are required to be competent as solicitors and to negotiate contracts and issue bills of lading for matter to be accepted by the company, and to transact business generally with the heads of houses and also families.

Mr. Hale: The answer is objected to as not re-
sponsive to the question, and as irrelevant and im- 117
material, and as relating to transactions between the Adams Express Company and its employees, not binding upon the City or these defendants.

Q. 54. Are they authorized by the express company to sign the bills of lading or express receipts or contracts for carriage? A. They are.

Q. 55. And does that apply both to drivers and helpers? A. It does.

Q. 56. Are they familiar or made familiar with the various tariffs and schedules or classifications of rates established by the Adams Express Company? A. They are, and they are required to be so.

118 William M. Barrett.

Q. 57. Is that indispensable for the conduct of their duties? A. It is.

Q. 58. Is it the custom throughout the City of New York for your drivers and helpers to sign these contracts of carriage or bills of lading? A. That is the universal practice.

Q. 59. Do these drivers keep records and receipts of the packages which they may from time to time deliver as received from other states? A. They do.

Q. 60. To your knowledge do they solicit business for the express company? A. That is part of the requirement, and they do.

119 Q. 61. How many wagons drawn by horses are used by the Adams Express Company in its business in the City of New York? A. 448.

Q. 62. And how many automobiles? A. 92.

Q. 63. Are these automobiles licensed by the state? A. They are.

Q. 64. How many of these wagons drawn by horses are kept or stabled in New York or Brooklyn? A. All of the automobiles are in New York City and Brooklyn. Probably 150 of the horse wagons are stabled in New York City.

Q. 65. And the remainder of the horse wagons are all stabled where? A. In Jersey City.

120 Q. 66. And that is their location when not in use? A. Yes, sir.

Q. 67. Have you frequently more than two men on a wagon engaged in collecting or delivering freight? A. We have, in the business section of the City.

Q. 68. About how many men are used daily in the City of New York by the Adams Express Company in the business of collecting and delivering packages? A. About 900.

Q. 69. How much of the business done by the

Adams Express Company in the City of New York represents packages received destined to points outside of the State of New York and packages received from points outside of the State of New York for delivery in the City of New York? A. About 98 per cent.

Q. 70. How much of the total number of packages handled by the Adams Express Company represents local business? A. About one per cent.

Q. 71. And how much represents what may be termed intrastate business? A. About one per per cent.

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Q. 72. Are all these 900 men or employees as to whom you have testified engaged daily in handling what may be termed interstate packages? A. They are.

Q. 73. What is the local business that you do, and between what points? A. The local business handled in conjunction with our interstate business represents only the traffic in New York State between New York City and the Connecticut State line.

Q. 74. Do you also do a local business in the City of New York? A. We do.

Q. 75. Is this local business in the City of New York the one per cent. that you have already referred to? A. It is.

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Q. 76. Will you please explain exactly how that part of your business is conducted? A. Our patrons and shippers—we have a regular business of carrying interstate shipments—prefer the Adams Express Company because of its reliability to handle local New York City traffic, and the wagon engaged in the handling of the interstate traffic is also engaged in the handling of the New York City traffic, which is, as I have before testified—about one per cent. of the total.

124 William M. Barrett.

Q. 77. Am I correct in assuming that this is transacted as a convenience to your interstate customers?

Mr. Hale: Objected to as leading and as incompetent, irrelevant and immaterial.

A. That is true.

Q. 78. Have you made a calculation to determine whether the local business done in the City of New York could be separated from your interstate business?

Mr. Hale: Objected to as calling for a conclusion
125 and prediction of the witness.

A. We have.

Q. 79. And will you please state briefly what would be the result or effect of carrying on this strictly local business in the City of New York by men and wagons other than those engaged in interstate business?

Mr. Hale: Same objection.

A. As I have said before, the percentage of the local business handled by the Adams Express Company is relatively so small that in order to give efficient wagon service for this very small business would mean practically a duplication of our entire
126 wagon equipment and force in New York City, which could not possibly stand the expense. It would mean congestion at our terminals and be utterly impracticable to do so.

Mr. Hale: The answer is objected to as being merely the opinion and argument of the witness, and not the statement of any act, fact or declaration relevant to the issue.

Q. 80. Have you made an investigation to ascertain what would be the cost of transacting that local business if you had to carry it on separate and apart from your interstate business? A. I have.

Mr. Hale: This general line of inquiry is objected to as incompetent, irrelevant and immaterial.

Q. 81. Will you please state the result of such investigation? A. The cost of wagon service alone would represent about 87 per cent. of the business.

Q. 82. And what other expenses would have to be added to that in order to transact it separately and apart from your interstate business? A. Office rental, terminal expenses, clerks, supervisory force and accounting.

Q. 83. Is it the fact, Mr. Barrett, that all this local business in the City of New York is transacted by your employees and your wagons that are engaged in interstate commerce? A. It is. 128

Q. 84. Referring now to what we may term your intra-state business—which I understand to represent one per cent. of your business in the City of New York—will you kindly describe what that intra-state business consists of? A. That represents business to or from New York City to points in New York State located on the New Haven Railroad between here and the New York state line and Connecticut.

Q. 85. And that is a distance of about how long? A. I guess about 16 miles from the city line.

Q. 86. How many stations or points do you serve in that distance? A. Not more than eight or ten. 129

Q. 87. Over what railroad is this intra-state business done between New York City and the state line? A. New York, New Haven & Hartford Railroad.

Q. 88. And that is one of the railroads over which the Adams Express Company operates its express business? A. It is.

Q. 89. Is it practicable or has it been ever found practicable to have two express companies oper-

130 William M. Barrett.

ating at the same time on one line of railroad or one train?

Mr. Hale: Objected to as incompetent, irrelevant and immaterial, and as calling for the conclusion and opinion of the witness.

A. It is decidedly impracticable.

Q. 90. To your knowledge has that been tried? A. It has.

Q. 91. And found impracticable? A. Yes, sir.

Q. 92. Is it also the fact, is it not, that the courts have held that the railroad companies engaged in
131 interstate commerce were entitled to limit the express service on their lines to one company?

Mr. Hale: Objected to as incompetent, irrelevant and immaterial, as not the best evidence, and as calling for the opinion and conclusions of the witness upon matters of law.

A. Yes, sir.

Q. 93. You recall, do you not, that that question was litigated and determined in what are known as the Express Cases in the Supreme Court of the United States? A. I do.

Q. 94. And since the decision of these cases in the Supreme Court of the United States has it been the invariable custom of railroads to limit the ex-
132 press service on their lines to one express company? A. It has.

Q. 95. Confining ourselves for the moment to intra-state business shipped on the New York, New Haven & Hartford Railroad from the City of New York to points this side of the Connecticut state line, I desire to ask whether such shipments are invariably accompanied by messengers? A. They are.

Q. 96. And do you have separate messengers for the intra-state business as distinguished from the

messengers in charge of the interstate business? A. No.

Q. 97. Are the intra-state packages in charge of the messengers who continue beyond the state line? A. They are.

Q. 98. And that is the invariable custom? A. That is.

Q. 99. You have, have you not, agents at the various stations between New York and the state line handling your business? A. We have.

Q. 100. Do these agents also handle both your intra-state and interstate business over this New 134
York, New Haven & Hartford Railroad? A. They do.

Q. 101. Would it be practicable, Mr. Barrett, to separately conduct the intra-state business as distinguished from the interstate business of your company over the New York, New Haven & Hartford railroad between New York City and the state line?

Mr. Hale: Objected to as calling for the opinion of the witness.

A. It would be impracticable.

Q. 102. Are you able to state approximately the value of the shipments handled by the Adams Express Company in the City of New York daily or 135
for any given time? A. No, I am not—the value?

Q. 103. The value? A. No, sir.

Q. 104. Is it or is it not the fact that most of the shipments are valued at $50? A. That is true; not exceeding $50.

Q. 105. And doesn't the form of your bill of lading in general use provide for such an agreed valuation of $50 in case the real value is not disclosed?

Mr. Hale: Objected to as incompetent, irrelevant and immaterial, and as not the best evidence,

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and as calling for the opinion of the witness as to legal construction of its bills of lading, which are not offered in evidence.

A. That is true.

Q. 106. Is the form now shown you the form of bill of lading in use by the Adams Express Company in conection with its business, whether interstate or intra-state? A. It is, but it is a freight receipt; it doesn't cover all.

Q. 107. The form shown you is the one that covers the shipment of ordinary packages and ordinary freight? A. Freight.

137 Mr. Guthrie: I offer that in evidence.

Paper referred to marked Complainant's Exhibit No. 6, J. A. S., Ex'r, January 11th, 1911.

Q. 108. Does the Adams Express Company use a different form of bill of lading in connection with the shipment of moneys, specie, bonds, coupons and negotiable paper? A. It does.

Q. 109. And is the form now shown you the form that is used by the express company in such cases? A. It is.

Mr. Guthrie: I offer that in evidence.

138 Paper referred to marked Complainant's Exhibit No. 7, J. A. S., Ex'r, January 11th, 1911.

Q. 110. Have you also another form of receipt or contract in connection with your collection department? A. We have.

Q. 111. And is the paper now produced the form which you use? A. It is.

Mr. Guthrie: I offer that in evidence.

Paper referred to marked Complainant's Exhibit No. 8, J. A. S., Ex'r, January 11th, 1911.

Q. 112. Are these three forms those in general use in the City of New York and elsewhere throughout the United States? A. They are.

Q. 113. And are these forms fac-similes of those filed with the Interstate Commerce Commission? A. They are.

Q. 114. Are these the forms of contracts or bills of lading which your drivers and helpers sign or execute on behalf of the Adams Express Company? A. They are.

Q. 115. And they are authorized to do so? A. They are.

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Q. 116. Does the Adams Express Company carry bullion and gold and silver ore? A. It does.

Q. 117. And is this a matter of daily occurrence? A. It is.

Q. 118. At times to what extent are you carrying in the City of New York gold and silver ore and bullion; I mean in value? A. Hundreds of thousands of dollars in bullion.

Q. 119. And in gold and silver ore? A. And in gold and silver ore.

Q. 120. Does the Adams Express Company also constantly carry money? A. It does.

Q. 121. And is this a matter of daily occurrence? A. It is.

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Q. 122. Is it the fact that most of the banks of the United States that ship money send it by express? A. It is.

Q. 123. At times how much in amount would you say the Adams Express Company has at one time in its possession carrying to and from the City of New York? A. Oh, millions of moneys.

Q. 124. And that is a matter of frequent occurrence, is it not? A. Frequent occurrence, in fact daily occurrence.

Q. 125. Does the company also carry securities,

bonds, stock and other negotiable documents? A. It does.

Q. 126. And is that a matter of daily occurrence? A. It is.

Q. 127. And at times does that amount to very much, and if so to how much? A. Hundreds of thousands of dollars, that is to and from New York City.

Q. 128. Does the express company do a business in the carrying of packages of jewelry? A. It does.

Q. 129. How many daily does it carry? A. Several thousand.

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Q. 130. And do all the jewelers of the City of New York ship almost daily over your company? A. They do.

Q. 131. At holiday times, how many packages of jewelry have you had at any one time in your possession in the City of New York destined for points outside of the City? A. About seven thousand.

Q. 132. In the shipment of jewelry and other valuable packages is the value always declared? A. Not always.

Q. 133. What is frequently the custom? A. It is customary for some to obtain outside insurance, and the shipments are made under the form of

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our receipt limiting the value to not exceeding $50.

Q. 134. But if the value is declared, however large, your company as common carriers must carry them, must it not? A. It must.

Q. 135. And you understand that it assumes full liability for the amounts so declared?

Mr. Hale: I object to that question as irrelevant and immaterial and as a conclusion.

A. It does.

Q. 136. Is the amount of your charge or the schedule of your rates based upon declared value? A. It is.

Q. 137. So that the greater the value of a package the higher the rate of carriage? A. That is true.

Q. 138. And is that regulated by the schedules or classifications filed with the Interstate Commerce Commission at Washington? A. Yes.

Q. 139. And these jewelry packages, are they collected and delivered as the case may be by these drivers and helpers to whom you have referred? A. They are.

Q. 140. And they are authorized to receive and receipt for the packages no matter what the declared value may be? A. The practice is not to give receipts for money shipments in the street or at the offices or at the banks, but they do deliver money packages and valuable packages. 146

Q. 141. But in the case of other valuable packages than money, are the drivers authorized to receipt no matter what the declared value may be? A. They are.

Q. 142. What is the practice in regard to the receipt of packages of money shipped by banks or bankers? A. The requirement is for the banks to deliver the moneys to our offices.

Q. 143. To one of the offices—— A. Either main offices or branch offices. 147

Q. 144. Do you carry bullion and money and Government bonds for the Government of the United States? A. We do.

Q. 145. Is that a matter of constant and almost daily occurrence; and between what points is such carriage of money? A. Practically all over the territory of the Adams Express Company.

Q. 146. From and to the State of New York, and from and to the City of New York? A. That is true.

Q. 147. Does the Adams Express Company carry perishable matters, and to what extent? A. It

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does. The extent of the perishable matter handled into New York City from the south and west represents approximately 60 per cent. of the bulk.

Q. 148. So that approximately 60 per cent. of all the packages which the Adams Express Company carries to New York from the south or the west consists of what you term perishable shipments, is that so? A. Not in pieces, but in bulk.

Q. 149. What do you mean by the term perishable? A. Perishable would cover fruit and vegetables, fish and valuable animals, foodstuffs; I
149 think that generally covers it.

Q. 150. Would it include butter, eggs—— A. Butter, that is foodstuff.

Q. 151. —and milk? A. And milk.

Q. 152. Oysters? A. Oysters and clams.

Q. 153. About how many articles of what may be termed perishable freight are included in your specifications? A. About 50.

Q. 154. Will you please explain here whether such perishable freight requires prompt delivery? A. It does, the quickest possible delivery.

Q. 155. And what is the effect of delay in such cases? A. It would be a depreciation, if not a total loss.

150 Q. 156. To what extent does the business of the express companies of the country require prompt and rapid delivery, Mr. Barrett?

Mr. Hale: Objected to as calling for the opinion of the witness and for matters obviously not within his personal knowledge.

A. The essence of express business is speed. Without speed the object of the service is not obtained. Express companies are the only transportation companies that have service on passenger trains; otherwise without passenger train service you could not obtain quick delivery, speed.

Q. 157. Does the express company also carry fragile or easily broken freight, and to what extent? A. Well, it is a very important extent—valuable crockery, chinaware, works of art—constitutes an important volume of express traffic.

Q. 158. And all that, I take it, is specified in detail in the classifications which are filed with the Interstate Commerce Commission? A. It is.

Q. 159. The Adams Express Company and the other interstate express companies are subject to the Interstate Commerce Law, are they not?

Mr. Hale: Objected to as calling for the opinion 152
of the witness on a matter of law.

A. They are.

Q. 160. And does your company comply with the provisions of the Act to regulate commerce?

Mr. Hale: The same objection.

A. It does—it has.

Q. 161. Does your company make, file and publish the schedules of rates and classifications required by that act? A. It has.

Q. 162. To what extent have these schedules or classifications been filed? A. All of our classifications and all of our rates have been filed with the Interstate Commerce Commission.

Q. 163. Could you state how voluminous those 153
classifications are? A. Oh, they are exceedingly voluminous; the compilation of the records of rates for the Interstate Commerce Commission required the employment of probably a hundred clerks for nearly two years.

Q. 164. Referring, Mr. Barrett, to the Exhibits 6 and 7, being the forms of the bills of lading in use by your company, will you briefly state what the rate fixed or collected by the Adam Express Company covers? A. The assessment of transportation charges implies the collection and the delivery, the

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collection from the house or the place of business of the shipper, and its delivery at destination to the place of business or residence of the consignee.

Q. 165. Does the rate as fixed and filed with the Interstate Commerce Commission and published under the Interstate Commerce Law include what we may call the wagon service? A. It does.

Q. 166. And is that invariably the case? A. It is.

Q. 167. So that the wagon service performed by your company in the City of New York in respect
155 of interstate shipments, whether in the collection of those shipments or in the delivery of shipments received from other States, is not charged for independently of the through rate? A. It is not.

Q. 168. Then I understand that the rate made in these schedules so filed with the Interstate Commerce Commission is a single indivisible rate covering the whole service rendered by the Adams Express Company from the time of the receipt of the package by the driver collecting the same in the City of New York until actually delivered to the consignee by one of your wagons at the point of destination? A. That correctly states the fact.

156 Q. 169. And the converse is true that this charge or through rate covers the service of collection in the foreign city and the delivery in the City of New York by your wagons to the consignees? A. That is true.

Q. 170. Will you please state what is the amount in dollars of the total charges on business originating or terminating in the City of New York per month? A. About seven hundred thousand dollars.

Q. 171. And what is the average amount of such business so originating and terminating in New

York per day? A. About twenty-three thousand dollars.

Q. 172. Were you familiar with the occurrences connected with the recent strike in the City of New York of express drivers?

Mr. Hale: Objected to as irrelevant and immaterial.

A. I am.

Mr. Hale: This objection is to apply to all questions asked concerning the strike.

Q. 173. When did that strike begin? A. October 21st.

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Q. 174. 1910? A. 1910.

Q. 175. And when did it terminate? A. November 14th, 1910.

Q. 176. In the meantime to what extent was the business of the Adams Express Company affected? A. The business of the Adams Express Company was affected to the extent of practically a paralyzation of our business in New York City.

Q. 177. Is it or is it not the fact that during that period very little interstate business was transacted? A. Very, very little, relatively.

Q. 178. And what was the reason why such business was not transacted? A. We were unable on account of the authorities to move our wagons in the streets of the City of New York.

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Mr. Hale: I object to that answer as a mere conclusion, and ask that it be stricken out.

Q. 179. Well, how did the strike originate, and describe briefly its effect on your business? A. On October 21st about ten or a dozen youths, so-called, boys, between the ages of 16 and 20, made application to the local agent of the United States Express Company at Hoboken for an increase in salary, and demanded that the increase in salary be allowed forthwith. The local agent informed them he had

no authority, told them he would have to refer to his immediate superior, and would advise them. Within an hour after the first application was made threats of violence had been made, the helpers had induced the drivers to vacate their posts, and within several hours pandemonium reigned. The next day the same company suffered to some extent the same experience at Communipaw, and the day following, I think, if that wasn't Sunday, and perhaps on Monday, the Wells-Fargo Express Company—by the threats of the striking employees
161 of the United States Express Company and mobs and hoodlums generally—forced the wagon employees of the Wells-Fargo Express Company to abandon that service.

Q. 180. Now, Mr. Barrett, confining ourselves to the Adams Express Company, what first happened in connection with the strike, of your personal knowledge, so far as the Adams Express Company itself is concerned? A. We had no previous advice or notice or demand by any employee of the Adams Express Company. The first information we had was our helpers and subsequently our drivers abandoning their posts. The helpers apparently were in sympathy with the striking em-
162 ployees of the other companies, and the drivers were afraid and protested against being sent out on the wagons because of fear of violence and theats of intimidation had been made.

Q. 181. Then so far as the Adams Express Company was concerned had any demands or grievances been submitted to you, or so far as you know to any officers of the Adams Express Company, prior to the strike? A. None whatever.

Q. 182. So far as you knew and so far as any officer of the Adams Express Company knew to the best of your knowledge and belief had any de-

mands or grievances been submitted prior to the strike? A. None.

Q. 183. So that so far as the Adams Express Company is concerned it had no knowledge of this strike before it was precipitated? A. That is true.

Q. 184. Have you any personal knowledge of interference by any one with the wagons of the Adams Express Company during the strike? A. No.

Q. 185. Have you any personal knowledge in regard to the police protection? A. I have not.

Q. 186. Have you any personal knowledge in regard to the arrest of the drivers of the Adams Express Company? A. I have not. 164

Q. 187. Did you have any personal knowledge of the impounding of one or more wagons of the Adams Express Company by the police authorities? A. I have no personal knowledge, but I was advised.

Q. 188. By whom were you advised of the arrest of drivers, if you were so advised, or of the impounding of wagons of the Adams Express Company?

Mr. Hale: Objected to as calling for hearsay, and also as assuming a fact not yet proven.

A. By our general manager. 165

Q. 189. And what is his name? A. Mr. Zimmerman.

Q. 190. Mr. Barrett, have you made an investigation and a calculation of the amount of freight which the Adams Express Company lost during the period of the strike, estimated upon the average for other similar periods?

Mr. Hale: Objected to as irrelevant and immaterial, and as calling for a mere guess.

A. I have.

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Q. 191. And how much was such actual loss in freight? A. At least $350,000.

Q. 192. Does that include any allowance for claims for delay and damage or loss of perishable and other shipments? A. Oh, no.

Q. 193. Mr. Barrett, in your opinion, would it be practicable to carry on the interstate business of the Adams Express Company in the City of New York without the use of wagons and drivers to collect packages and deliver them?

Mr. Hale: Objected to as calling for the opinion
167 of the witness upon one of the matters in issue.

A. It would not be practicable.

Q. 194. To your knowledge for how many years has the Adams Express Company been using wagons in the City of New York? A. Oh, for 50 years.

Q. 195. So far as you know until the present controversy arose, or the recent strike, had the drivers of the Adams Express Company been required to take out licenses by the City of New York.

Mr. Hale: Objected to as irrelevant and immaterial, and because the law speaks for itself as to what is required.

A. No.

168 Q. 196. For how many years have you been located here in New York? A. Over three years.

Q. 197. And during that period has any demand ever been made upon the Adams Express Company that it should take out licenses for its drivers engaged in collecting and delivering packages in the City?

Mr. Hale: Objected to as irrelevant and immaterial.

A. No.

Q. 198. Has the Adams Express Company to

your knowledge ever taken out a license for its express business in the City of New York? A. No.

Q. 199. To your knowledge has any demand ever been made on behalf of the authorities of the City of New York that it should so take out a license for the conduct of its express business? A. No.

Q. 200. Mr. Barrett, could an ordinary teamster or truckman be put in charge of your wagons collecting and delivering freight if he previously had no knowledge of your business?

Mr. Hale: Objected to as incompetent, irrelevant and immaterial, as calling for the conclusion of the witness. 170

A. It would be very unwise to do so.

Q. 201. Will you state the reasons why? A. Because of the lack of intelligence and his inability to execute contracts and intelligently interpret the tariffs, rules and regulations of the company.

Q. 202. To what extent is it necessary that your drivers and helpers should be competent and experienced men, particularly in the City of New York?

Mr. Hale: The same objection.

A. In the City of New York our drivers are obliged to execute bills of lading and contract and make the assessment of transportation charges, which calls for an exact assessment, otherwise we would be amenable under the Interstate Commerce Act for either charging greater or less than the lawful rate. 171

Q. 203. Are you able to state how many of your drivers and helpers that you employ in the City of New York reside in New Jersey? A. Approximately 350 or 400.

Q. 204. In case of a strike in the City of New York among your drivers and helpers would it be practicable to transfer competent and experienced

drivers in your employ in other cities? A. It would.

Q. 205. And to what extent would this be necessary for the protection of your business?

Mr. Hale: Objected to as calling for opinions upon conditions which may never exist.

A. Under the law we would be absolutely powerless, because we could not obtain experienced and efficient help that are residents in New York and could be vouched for probably by citizens of New York.

173 Mr. Hale: Answer is objected to as a mere opinion and argument, and motion is made to strike it out.

Q. 206. But if all your drivers and helpers engaged in the City of New York should leave you again as in October, 1910, to what extent would it be necessary to transfer other competent and experienced men in your employ at other points to the City of New York? A. I don't think I catch that, Mr. Guthrie. Of course it would depend upon the number of men that would go out.

Q. 207. If you had to transfer any large number of such drivers upon short or immediate notice, would it be practicable to obtain for each of such
174 drivers or helpers the testimony of reputable residents of the City of New York as to their competence?

Mr. Hale: Objected to as calling for an opinion upon a hypothetical state of facts.

A. It would.

Q. 208. You say it would be practicable? A. It would not be practicable.

Q. 209. Then the answer would be, it would not be practicable? A. It would not; it would not be possible.

Q. 210. Mr. Barrett, will you briefly describe the manner in which you conduct your business in the City of New York in regard to shipments from the City of New York to points north, south and west, and in regard to shipments from points north, south and west by way of Jersey City? A. All business that is accepted by the Adams Express Company in New York City is accumulated by means of the wagon service at the different offices and warehouses in New York City, and there, at the warehouses, they are separated for the business destined to territory north and east of New York, 176
and from the business that is destined south and west of New York City. The traffic so separated destined for east of New York City is wagoned to 48th Street and there loaded on cars, on express cars of the New York, New Haven & Hartford Railroad. The other traffic for the south and west is hauled to Jersey City and there loaded in express cars of the Pennsylvania Railroad. We also have a terminal at Weehawken. That traffic is hauled across the river to Weehawken and there loaded on express cars destined to points on the New York, Ontario & Western Railroad, and tributary thereto.

Q. 211. So that all interstate shipments collected 177
or received by the Adams Express Company in the City of New York and destined to points outside of the State of New York are taken in the wagons of the express company either to Jersey City or Weehawken in Jersey, or to the station or terminal of the New York, New Haven & Hartford Railroad at 48th Street? A. Yes, sir.

Q. 212. Now, in respect of shipments received from out of the state consigned to consignees in the City of New York south of 59th Street, what is the custom in regard to packages received from the west and south through Jersey City or Wee-

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hawken? A. Through Jersey City, all matter received at that terminal for south of 59th Street is loaded onto wagons that make delivery direct from Jersey City, from our pier at Jersey City, direct to consignee.

Q. 213. And there is then no transfer of that shipment from the time it is unloaded from the cars at Jersey City or Weehawken onto your wagon until the time when it is actually delivered to the consignee in the City of New York? A. No, sir.

Q. 214. In case the shipments are destined for
179 consignees above 59th Street what is the custom in regard to the conduct of your business? A. Our rule is to wagon that to our several offices, 124th Street and St. Nicholas Avenue, and also 85th Street, and there it is assorted and delivered by our own wagons.

Q. 215. In regard to interstate shipments to the City of New York from points east or north, does that freight all come into the city over the New York, New Haven & Hartford Railroad? A. From the east?

Q. 216. Yes. A. Yes, sir.

Q. 217. What is the custom in regard to the hand-
180 ling and delivery of packages so coming from the east over the New York, New Haven & Hartford? A. We make delivery from the 48th Street terminal, business received off of the New York, New Haven & Hartford, direct from that terminal to all points south of 59th Street. I am not prepared to answer specifically how matter is delivered for points above 59th Street from the 48th Street terminal.

Q. 218. But practically all interstate shipments coming into New York over the New York, New Haven & Hartford Railroad are transferred at 48th Street from the cars of the New York, New Haven

& Hartford Railroad onto your wagons and are then delivered to consignees without any transfer or change? A. That is true, with the exception of some Harlem section, some part.

Q. 219. Now, in the collection of shipments for points on the New York, New Haven & Hartford Railroad and other points east, what is the practice of your wagons? A. As I said before, matter is accepted at our offices or picked up by our wagons, subsequently assembled at our different clearing houses or freight warehouses, there assortment is made and wagoned from the warehouses to our 182
48th Street terminal and there loaded into cars.

Q. 220. Mr. Barrett, did you personally have any knowledge of any arrangement made at any time by the Adams Express Company with the Bureau of Licenses in regard to licensing some of your men engaged in local business?

Mr. Hale: Objected to as incompetent, irrelevant, immaterial and as assuming that there was such an arrangement.

A. No, sir.

CROSS-EXAMINATION BY MR. HALE:

x-Q. 221. Mr. Barrett, I didn't quite understand what you meant by saying that there had been a loss of about $350,000 of freight during the strike. 183
Will you explain that a little bit, please? A. That is predicated upon the average business per day handled at New York.

x-Q. 222. You mean there was a loss of that amount of business to the Adams Express Company? A. Yes.

x-Q. 223. No physical loss of the goods, of the physical goods? A. No.

x-Q. 224. Does your company carry shipments to any points in New York except points upon the New York, New Haven & Hartford Railroad? A. It does.

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x-Q. 225. What points? A. For example, Buffalo, and points in New York State on the New York, Ontario & Western, points on the Pennsylvania Railroad located in New York State, all of which are reached from New York City via Jersey City or Weehawken.

x-Q. 226. Did you include those shipments in your estimate of what proportion was intrastate business and what interstate business? A. No, sir.

x-Q. 227. In which class did you place those? A. Interstate class.

185 x-Q. 228. To what extent would that change your proportions if that were classed as intrastate business? A. I haven't made any calculation. For instance, New York City to Buffalo, would go through New York State, New Jersey, Pennsylvania, back into New York.

x-Q. 229. For how long a time have you had approximately the number of wagons in daily use in the City of New York which you mentioned; 450, wasn't it? 448? A. Oh, that number substantially I suppose was, I would say, for the year; of course the exact number fluctuates with the business; we might have greater, we might have less.

186 x-Q. 230. And that is true as to the number of drivers, also? A. The same.

x-Q. 231. There has been no great increase in the past year? A. No.

x-Q. 232. You have spoken of some 900 other employees in the City of New York in addition to drivers, I believe. Where do they work, and what do they do? A. I referred to over 2,000 employees in the City of New York.

x-Q. 233. I think you spoke of 800 men who handled the shipments at some points in the city, did you not? A. Drivers, wagon men I referred to.

x-Q. 234. As to the wagons and horses which are stabled in Jersey City, they are daily brought over into New York City and they are employed in the manner described by you, is that correct? A. Yes, sir, all except six.

x-Q. 235. In making collections of shipments from the City of New York how are your wagons or drivers called to the customer or shipper? A. A business house ordinarily has wagon calls several times a day, depends upon the extent of the business; they may get three or four calls a day and they may by arrangement only get one or two calls 188
a day. Some of the shippers display a call card which indicates that there is some business to be forwarded by the company; there is what they call a silent call, they call, and if there are no goods to be forwarded there is nothing to be shipped.

x-Q. 236. Does your company have special drivers or delivery men for shipments of money, bonds, gold and so forth? A. Yes, sir.

x-Q. 237. All that class of shipments are delivered by special delivery men of the company? A. Money and gold, yes, sir, securities, bonds, stocks.

x-Q. 238. In making your estimate of the cost of transacting the purely intrastate business sepa- 189
rate and apart from the interstate business, how did you proceed and what elements did you consider? What was the basis of that estimate? A. Simply the number of wagons and the wages of maintaining the force and maintenance of the wagons; no cost of equipment was considered.

x-Q. 239. How did you estimate the number of wagons required? A. That was to cover the territory.

x-Q. 240. You mean to patrol it regularly? A. Yes, sir.

x-Q. 241. In the same manner that you do now for both classes? A. Yes, sir; give substantially the same service as we give to-day.

REDIRECT-EXAMINATION BY MR. GUTHRIE:

Rd-Q. 242. You were asked in regard to the delivery of money, gold, stock and securities by special men. Is such delivery made by drivers and helpers? A. They are.

Rd-Q. 243. And the delivery is made by means of your wagons? A. By means of our wagons.

Rd-Q. 244. And when you say special drivers
191 and helpers they are particular or special men to whom that duty is assigned? A. Special service, special wagons, separated—distinguished from freight.

Rd-Q. 245. And that is because of the value and the necessity for the greater care? A. The great value.

Rd-Q. 246. You were also interrogated in regard to calls, and you used the expression that certain shippers or merchants get calls. Was I correct in understanding that that meant that your drivers or helpers called upon them? A. Yes, sir.

Rd-Q. 247. Is it not the fact that the express
192 company is also constantly notified by telephone at one or more of its offices to send for shipments? A. Yes, sir.

Rd-Q. 248. And thereupon a driver and helper are sent with a wagon to the shipper to make the contract of carriage? A. Yes, sir.

Rd-Q. 249. In this Exhibit No. 5 there are specified some 423 drivers and 466 helpers under the heading of the New York department. Do those figures include the men that you have testified to who come from Jersey City and make deliveries in the City of New York? A. Yes, sir.

Rd-Q. 250. It appears on this memorandum that you have included 48 agents. What are those agents? A. That represents the superior in charge of the branch offices; for instance, we maintain an office in Harlem, the one in charge of the Harlem office is called the agent.

Rd-Q. 251. You have also specified on this Exhibit 748 clerks. Where are they employed? A. They are employed in New York City and also in Jersey City.

Rd-Q. 252. You have also specified 150 stablemen. Are part of those men employed in Jersey 194
City? A. Part of them, most of them.

Rd-Q. 253. And does the same remark apply in regard to the 191 porters? A. Yes, sir.

Rd-Q. 254. So that you have practically included as part of the New York department the men who are employed in Jersey City or to and from Jersey City? A. Yes, sir.

Rd-Q. 255. Mr. Barrett, is or is it not the fact that your tariff or tariffs and classifications for shipments from New York to other points in the State are included in the schedules and classifications which you have filed with the Interstate Commerce Commission? A. It is a fact.

Rd-Q. 256. And is it the fact that you treat such 195
business from New York through Jersey and Pennsylvania as interstate business?

Mr. Hale: Objected to as irrelevant and immaterial.

A. We do.

Rd-Q. 257. All the freight shipped from New York to Buffalo and other New York points via Jersey City through New Jersey or Pennsylvania, are they in charge of messengers? A. Yes, sir.

Rd-Q. 258. And are these messengers in charge

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of other interstate shipments at the time? A. They are.

Rd-Q. 259. Would it be practicable to segregate the shipments from New York to Buffalo and other New York points from the other interstate shipments to and from New York? A. It would not be.

RECROSS-EXAMINATION BY MR. HALE:

Rx-Q. 260. Has any demand ever been made upon your company that you procure licenses for any of these agents of whom you have spoken? A. Not that I know of.

197 Rx-Q. 261. Or any of your offices in the City of New York? A. No.

WILLIAM M. BARRETT.

Sworn by me,
JOHN A. SHIELDS,
Examiner.

Mr. Guthrie: I offer this paper in evidence, being a copy of the opinion of Corporation Counsel Rives, dated Dec. 9, 1902.

Paper referred to marked Complainant's Exhibit No. 9, J. A. S., Ex'r, January 11th, 1911.

Adjourned to Wednesday, January 18th, 1911,

198 at three o'clock P. M.

NEW YORK, January 18th, 1911, 3 P. M.

Met pursuant to adjournment, at the offices of Messrs. Guthrie, Bangs & Van Sinderen, 44 Wall Street, New York City.

Present: Counsel as before.

Mr. Guthrie: I would like to offer in evidence a letter dated March 6th, 1908, from the firm of Cravath, Henderson & de Gersdorff, as attorneys for the Adams Express Company, to J. P. Corrigan, Chief of Bureau of Licenses of the City of New York.

Mr. Hale: Objected to as incompetent, irrelevant and immaterial, and not binding upon the City. 199

It is admitted that Messrs. Cravath, Henderson & de Gersdorff were attorneys for the Adams Express Company.

Paper referred to marked Complainant's Exhibit No. 10, J. A. S., Ex'r, January 18th, 1911.

Mr. Guthrie: I offer in evidence a letter dated March 11th, 1908, from J. P. Corrigan, Chief of the Bureau of Licenses of the City of New York, to Messrs. Cravath, Henderson & de Gersdorff, attorneys for the Adams Express Company.

Mr. Hale: Same objection. 200

Paper referred to marked Complainant's Exhibit No. 11, J. A. S., Ex'r, January 18th, 1911.

Mr. Guthrie: I offer in evidence a form of application furnished by the Bureau of Licenses, being a new form put in use since the beginning of the strike on or about October 17th, 1910, and being the form now in use by said Bureau of Licenses.

The same is received in evidence subject to verification and to a motion to strike out on any ground as defendants may hereafter be advised.

Paper referred to marked Complainant's Exhibit No. 12, J. A. S., Ex'r, January 18th, 1911. 201

It is stipulated by and between the parties that the Cosby's Code of Ordinances of the City of New York shall be deemed to be in evidence, and that any provisions thereof may be referred to and used by either party, and that the ordinances contained in such publication were at the time of the commencement of this suit, and still are, in full force and effect.

It is stipulated by and between the parties to this suit that although the Adams Ex-

press Company has been employing drivers and helpers and using wagons in the streets of the City of New York in the course of the conduct by it of its interstate business for over 50 years, it has never been compelled by any City officials acting under any statute, ordinance or otherwise to take out a license or licenses for the conduct of its interstate express business, or to employ only licensed drivers for its wagons and vehicles used in such interstate commerce or to conform to any tariff of charges or rates prescribed by any statute or municipal ordinance, and that its wagons and the drivers and helpers employed by it and engaged in interstate business have never been licensed in the City of New York, except that for several years last past about 40 licenses for wagons and drivers have been taken out by the Adams Express Company and license fees thereon have been paid.

It is further stipulated and agreed between the parties that the defendants herein have caused the arrest in the Borough of Manhattan and the City of New York of a driver of the Adams Express Company engaged in driving a wagon of the said company used only in interstate transportation (such driver and wagon being unlicensed), namely, such driver and wagon being engaged in carrying merchandise in transit from Jersey City, New Jersey, to a point within the City of New York on through bills of lading; that at the time of said arrest said wagon had conspicuously marked thereon the following words, to wit: "This wagon carries interstate commerce traffic only," and that the defendants, the Mayor and Police Commissioner of the City of New York, have threatened and intend to arrest other unlicensed drivers of unlicensed wagons belong-

ing to said Adams Express Company, although engaged in interstate commerce and to enforce the ordinances set forth in the bill of complaint herein against the company and all its wagons and drivers.

JOSEPH ZIMMERMAN, called and sworn as a witness on behalf of complainant, testified as follows:
DIRECT-EXAMINATION BY MR. GUTHRIE:

Q. 1. Will you please state your name, age, residence and occupation? A. Joseph Zimmerman; age, 62; residence, New York; I am general manager for the Adams Express Company.

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Q. 2. How long have you been connected with the Adams Express Company, and in what capacities? A. Well, I have been connected with the Adams since January 1st, 1882, as superintendent; later general manager.

Q. 3. And where have your duties been performed? A. All over the United States; that is, wherever the Adams Express Company worked—did business.

Q. 4. Are you the general manager of the whole system? A. I am as to traffic operation and general manager of the New York department.

Q. 5. Prior to your connection with the Adams Express Company in what business were you? A. Well, I have been in express business since 1866, practically all the time, different companies.

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Q. 6. Were you present and did you hear the testimony given by the witness William M. Barrett, the president of the Adams Express Company? A. Yes.

Q. 7. Did you hear his testimony? A. Yes.

Q. 8. And are you able from your knowledge of the business of the Adams Express Company to confirm what he testified to as to the character, extent and manner of carrying on the business of the Adams Express Company? A. Yes.

208 Joseph Zimmerman.

Q. 9. Mr. Zimmerman, will you please explain the facilities—what, if any, facilities the Adams Express Company has at the terminal stations in Jersey City, Weehawken or 48th Street, New York, to provide for accumulation of freight? A. None beyond the current business. We have a pier at Jersey City and warehouse in Weehawken and a warehouse at 48th Street to take care of the Grand Central business, which means our eastern business, New York, New Haven & Hartford.

Q. 10. Is it or is it not necessary to remove the
209 freight from the trains as they come in? A. It is.

Q. 11. And is it the fact that practically all your freight, that is all the express freight, is carried on passenger trains? A. It is.

Q. 12. During the recent strike to what extent was there an accumulation of freight coming to the City of New York?

Mr. Hale: Objected to as irrelevant and immaterial, and this objection is to apply to all inquiries as to conditions growing out of the recent strike; this line of inquiry is also objected to as impertinent to the questions presented by the bill.

A. Beyond the capacity of our pier in Jersey City and our warehouses elsewhere to hold it.

210 Q. 13. Did I understand you to say that you had an accumulation beyond your facilities to take care of? A. Yes.

Q. 14. What, if anything, did the Adams Express Company do to provide for such accumulation? A. We rented a pier in Brooklyn to which we moved the accumulation by floats, and there stored it until we were able to make deliveries.

Q. 15. Have you any warehouses in the City of New York where you can store accumulations of freight that you are unable to move by your wagons? A. No.

Q. 16. In the conduct of the express business to

what extent, if any, is the element of promptness or speed or expedition involved? A. It is indispensable; it must be the promptest in picking up and delivering and transporting.

Q. 17. Can you explain that any further? A. Why, I might say that it means express business, the prompt handling.

Q. 18. Is that the difference in transportation between the freight carried ordinarily by railroads and freight carried by express companies? A. Yes.

Q. 19. During the recent strike did you have any perishable goods spoiled? A. Yes. 212

Q. 20. And what was done with such goods? A. Well, we had to take that to one of the City dumps and throw it away.

Q. 21. To what extent, if any, have claims for perishable goods been made against the Adams Express Company for goods spoiled during the recent strike? A. Well, our records indicate that 500 preliminary letters relating to claims are being investigated.

Q. 22. And do these claims all grow out of the conditions attending the recent strike? A. We think that the investigation will prove that they did.

Q. 23. Will you kindly state briefly the course 213 of business with respect to shipments received from out of the State over the New York, New Haven & Hartford Railroad for points in the City of New York above 59th Street? A. After unloading at 48th Street it is carried to one of two or three places uptown where it is assorted for the different delivery districts, the first one being at 77th Street and Amsterdam Avenue, and others at 106th Street and 124th Street; there it is unloaded, divided as between several delivery districts and sent out on delivery wagons.

Q. 24. Will you state briefly the custom of the Adams Express Company in regard to the collec-

214 Joseph Zimmerman.

tion in the City of New York of packages of money, securities and bullion? A. Why, the money, securities and bullion are required to be brought to one of our offices for receipt, our wagon men not being allowed to receipt for them either at the banks or on the street.

Q. 25. Now, in respect to similar packages of money, securities and bullion arriving from points outside of the State of New York? A. We deliver them by wagons.

Q. 26. Then it is the custom for your wagons
215 and helpers to deliver such valuable packages? A. Yes.

Q. 27. Mr. Zimmerman, are you able to state approximately how many drivers and helpers of the various express companies engaged in interstate business—that is, the Adams, American, National, United States and Wells-Fargo—are employed in the City of New York? A. There are at least 3,000.

Q. 28. And these other express companies that I have mentioned, are they engaged in interstate commerce substantially in the same manner as the Adams Express Company? A. Yes.

Q. 29. Have you caused investigation to be made
216 personally as to how many drivers and helpers of the Adams Express Company now belong to the so-called Teamsters' Union?

Mr. Hale: Objected to as incompetent, irrelevant and immaterial.

A. I did, and my information was at least 90 per cent.

Q. 30. Did you have any personal knowledge as to the number of your men who were members of the Teamsters' Union or any other union prior to the recent strike in October, 1910? A. As to their belonging to unions?

Q. 31. Yes. A. They did not.

Q. 32. Are you able to state whether or not the employees or any large proportion of the employees, that is, the drivers and helpers of the other express companies, do or do not belong to this Teamsters' Union? A. My information is that a large proportion of them do belong.

Q. 33. Have you yourself made any investigation upon this point? A. I made inquiries of the officials of other companies; my answer is based on information given by them.

Q. 34. Mr. Zimmerman, have you any knowledge or experience as to the custom of unions to 218
engage in what are called sympathetic strikes? A. I believe it to be one of their rules; the men joining the Teamsters' Union obligate themselves to go out upon call. In the last case the employees of the different companies went out in sympathy with the first company striking.

Q. 35. Mr. Barrett testified that the employees of the Adams Express Company in the recent strike went out without any notice or demand upon your company. What is your knowledge in regard to that? A. That is the fact.

Q. 36. Mr. Zimmerman, to your knowledge were all the wagons of the Adams Express Company in 219
use in the City of New York in October, November and December, 1910, and at the present time engaged in carrying interstate shipments? A. Yes.

Q. 37. Mr. Zimmerman, is it the fact to your personal knowledge that the service which the Adams Express Company renders through its drivers and helpers and wagons in the City of New York, in the collection, transfer and delivery of packages to and from railroad trains or boats, is part of the service of the express company as carrier on routes for continuous interstate transportation, at indivisible rates on through bills of lading, according to the tariffs and classifications

220 Joseph Zimmerman.

filed with the Interstate Commerce Commission? A. It is.

Q. 38. How many separate tariffs has the Adams Express Company now on file with the Interstate Commerce Commission and in force and effect? A. We have 80 of the character that that represents (indicating paper); this contains over 55 pages; besides which there is another class of 184 tariffs.

Q. 39. Well, are the 80 tariffs that you refer to what are known as merchandise tariffs? A. Mer-
221 chandise tariffs.

Q. 40. And are the 184 that you refer to known as commodity tariffs? A. Commodity tariffs.

Q. 41. Is the paper which you now produce a sample of one of the merchandise tariffs to which you have referred? A. It is.

Q. 42. And to this tariff marked "G" there are attached some 55 pages of figures and items showing the different rates to various points? A. Yes.

Q. 43. And does the size and bulk of this particular tariff now shown you represent approximately the size of the other tariffs which are on file? A. Yes; some of them are not quite as large, but then that is a fair sample.

222 Mr. Guthrie: I offer in evidence the first page of this merchandise tariff marked "G."

Mr. Hale: Objected to as irrelevant and immaterial.

Paper referred to marked Complainant's Exhibit No. 13, J. A. S., Ex'r, January 18th, 1911.

Cross-examination waived.

JOSEPH ZIMMERMAN.

Sworn by me,

JOHN A. SHIELDS,
Examiner.

HENRY PLATT, called and sworn as a witness on behalf of complainant, testified as follows:

DIRECT-EXAMINATION BY MR. GUTHRIE:

Q. 1. You will state your full name, age, residence and occupation? A. Henry Platt; 45 years of age; 83 West 53rd Street, Bayonne, New Jersey; special investigator for Mr. A. C. Vandiver, who is counsel in criminal cases for the Adams Express Company.

Q. 2. How long have you been so employed? A. Pretty near three years.

Q. 3. And are your duties practically confined 224
to investigating cases in which the Adams Express Company is concerned? A. Yes, sir; all investigations that are sent over to Mr. Vandiver.

Q. 4. And you are constantly employed in Adams Express matters? A. Yes, sir.

Q. 5. And you are familiar with their business and employees and wagons in the City of New York? A. Yes, sir.

Q. 6. In November, 1910, did you go under the direction of Mr. Vandiver or any other attorney or officer of the Adams Express Company to the corporation yard at the foot of Rivington Street? A. Yes, sir. 225

Q. 7. Did any one accompany you? A. I went alone and I got there about three o'clock, and I waited at the corporation yard until about five o'clock, when an Adams Express wagon, No. 413, was driven into the yard by two officers.

Q. 8. Two police officers? A. Two police officers.

Q. 9. Was there a driver with it? A. No, sir; and I went to the yardmaster and told him that I was there for the purpose of paying whatever poundage was necessary for the release of the wagon and horses, and he told me that he could not deliver the wagon or horses to me, that I would have to see the superintendent, Mr. Broderick.

226 Henry Platt.

Q. 10. Who is Mr. Broderick, do you know? A. He was the superintendent of the maintenance of sidewalks.

Q. 11. Bureau of Sidewalks of the City of New York? A. Yes, sir, of 13 and 21 Park Row. I asked him if he would call up Mr. Broderick for me, so I could speak to him over the telephone, and he did, and somebody at the other end of the wire told me that I could not get the wagon out that night, that the wagon was in charge of the police department, and that I would have to go to the
227 Eighth Precinct police station and get an order of release from Inspector Daly, which I was to present to the office of the maintenance of sidewalks, in the Park Row Building, who would then issue orders to the superintendent of the yard for the release of the horses and wagon. I again offered to pay poundage for the wagon to the yardmaster and he refused to take it. He said he had to receive his orders from the superintendent before he could release it. The wagon was left in the yard and the horses were taken around to a stable some place on Mangin Street.

The next day, accompanied by Mr. Liebner, we
228 went to the Eighth Precinct police station, and asked for Inspector Daly. Inspector Daly was not in the station house, so some one in command called the police headquarters on the telephone, and somebody answered him, and then after that conversation he told Mr. Liebner and myself that he would give us an order for the release of the horses and wagons that were in the Rivington Street yard. After that the order was made out—the two orders were made out, one for the horses and one for the wagon. The captain was about to hand them to me, and then he changed his mind and told me to wait a minute. He went to the telephone, and before calling he told me he was going to call up the

legal department of the police bureau, and after that conversation he told me to go down to the Adams Express Company and tell the Adams Express Company that if they sent a man over to the Park Row Building with an order directing the wagon to be turned over to the bearer that the Bureau of Sidewalks would issue an order for the release of that wagon and also the same would be done with respect to the horses, but that he was going to send the order for the wagon and the order for the horses direct by some policeman, so that they would be there by the time we got there. I 230
then left the station house. On the 19th, I believe it was the 19th—

Q. 12. Of November? A. Of November, accompanied by Mr. Liebner we went to the Park Row Building with an order from the Adams Express Company, directing the superintendent to turn the wagon over to us. We asked for Superintendent Broderick and a man who said he was Superintendent Broderick asked us what he could do for us. We gave him the order and told him that we came there to get a release for the wagon that was in the Rivington Street yard, and he told us that—
he asked us whether we had a license for the wagon 231
and whether we were licensed drivers. I answered no. He then told us that it was Mayor Gaynor's orders not to turn the wagon over to the Adams Express Company until we had a license for the wagon and that a licensed driver would have to get the wagon from out of the yard. We then left.

Q. 13. To your knowledge is the wagon still in the Rivington Street corporation yard? A. The wagon is still there.

Q. 14. And to your knowledge is that the corporation yard of the City of New York? A. It is.

Q. 15. Who is Mr. Liebner? What is his full

232 Joseph J. Liebner.

name? A. Joseph J. Liebner; he is also an agent for Mr. Vandiver.

Q. 16. And engaged in Adams Express Company business constantly? A. Yes, sir.

Mr. Guthrie: That is all.

Cross-examination waived.

HENRY PLATT.

Sworn by me,
JOHN A. SHIELDS,
Examiner.

JOSEPH J. LIEBNER, called and sworn as a wit-
233 ness on behalf of complainant, testified as follows:

DIRECT-EXAMINATION BY MR. GUTHRIE:

Q. 1. You will state your name, age, residence and occupation? A. Joseph J. Liebner; 26; 350 West 56th Street; special agent for the Adams Express Company.

Q. 2. How long have you been in the employ of the Adams Express Company as special agent? A. About three years.

Q. 3. And are you familiar with its business and wagons and drivers and helpers? A. I am.

Q. 4. Did you hear the testimony of the witness
234 Mr. Platt? A. I did.

Q. 5. And you heard him testify as to an interview with a man representing himself as Superintendent Broderick of the Bureau of Sidewalks? A. Yes, sir.

Q. 6. Do you confirm as correct his statement of what occurred on that occasion? A. I do.

Mr. Guthrie: That is all.

Cross-examination waived.

JOSEPH J. LIEBNER.

Sworn by me,
JOHN A. SHIELDS,
Examiner.

HERMAN BREMER, called and sworn as a witness on behalf of complainant, testified as follows:

DIRECT-EXAMINATION BY MR. GUTHRIE:

Q. 1. State your name, age, residence and occupation? A. Herman Bremer; 45 years old; 332 East 51st Street; inspector of wagon service.

Q. 2. You are in the employ of the Adams Express Company? A. Yes, sir.

Q. 3. How long have you been in such employ? A. 27 years.

Q. 4. And have your duties been in the City of New York? A. Yes, sir. 236

Q. 5. Do you know that there is a corporation pound or yard of the City of New York in 56th Street? A. In 55th Street.

Q. 6. In 55th Street? A. Yes, sir.

Q. 7. Have you any knowledge of the arrest and impounding in November, 1910, of any wagons of the Adams Express Company? A. Yes, sir.

Q. 8. What knowledge have you on the subject? A. I was sent there to get the horses out from the livery stable.

Q. 9. You were sent to the yard in 55th Street? A. No, I was sent to the livery stable to get the horses out first. 237

Q. 10. And where were the horses? A. In Doyle's livery stable; I believe it was Doyle's in 55th Street, between Tenth and Eleventh Avenues.

Q. 11. Won't you please tell as briefly as possible what occurred? A. Well, I received an order from 309 Canal Street, also $16, I believe, I am not sure of the amount—to go to Doyle's and take out those four horses.

Q. 12. Were four horses of the Adams Express Company at Doyle's livery? A. Yes, sir.

Q. 13. And do you remember the date when you went there? A. I believe it was on the 13th.

Q. 14. Of November of last year? A. Yes, sir.

238 Herman Bremer.

Q. 15. And you found four horses of the Adams Express Company there? A. Yes, sir.

Q. 16. Did you get those horses? A. Yes, sir.

Q. 17. Did you have to pay anything and if so how much? A. I believe $16.

Q. 18. To whom did you pay that? A. To a lady, to an old lady.

Q. 19. In charge of the stable? A. Yes, in charge of the stable.

Q. 20. And were you given the receipt that I now show you? A. I believe it was a receipt like this.

239 Q. 21. Is that to the best of your recollection the receipt that was given to you at the time in payment of that $16? A. I think $16.

Mr. Guthrie: I offer that in evidence.

Paper referred to marked Complainant's Exhibit No. 14, J. A. S., Ex'r, January 18th, 1911.

The Witness: I wasn't the only one that went there, you know.

Q. 22. Who accompanied you? A. The stable foreman, Mr. Hogan, 56th Street stable; has charge of the stable.

240 Q. 23. You mean the stable of the Adams Express Company? A. Yes, sir.

Q. 24. Have you any personal knowledge as to how those Adams Express Company horses came to be in Doyle's stable? A. No, sir, I haven't.

Q. 25. Did you go to the pound or yard at any time in regard to the wagons there? A. I did, yes, sir.

Q. 26. When did you do that? A. On the 15th or 16th; I am not sure of the date.

Q. 27. That would be the 15th or 16th of November? A. I think the 14th or 15th, I am not sure.

Q. 28. Of November of last year? A. Yes, sir.

Q. 29. And what did you do there? A. I went there to get out these two wagons, Nos. 388 and 494,

and I was told that there was $10 apiece on each wagon.

Q. 30. Well, you found there in the corporation yard or pound two wagons of the Adams Express Company? A. Yes, sir.

Q. 31. Had you any personal knowledge as to how long they had been there? A. No, sir, I had not.

Q. 32. And whom did you see there? A. The man in charge of the yard; I don't know what his name was.

Q. 33. And did you demand from him the de- 242
livery to you of those wagons? A. Yes, sir, I went to the 51st Street station house and an officer was sent along with me to get those wagons out, and when we got there I was told there was $10 apiece on these wagons and I couldn't get them without the money.

Q. 34. Did you then pay the money? A. No, sir,

Q. 35. What did you next do? A. I notified our office, 309 Canal Street, there were $10 due on each wagon.

Q. 36. And then what did you do, if anything? A. Then I went back to the office.

Q. 37. Well, now, did you ever return to the
pound, and if so when? A. Yes, sir, about two 243
o'clock in the afternoon of the same day, when I called for these wagons.

Q. 38. And were you then also accompanied by a policeman? A. No, sir, not the second time.

Q. 39. And what occurred then? A. I got out the wagons.

Q. 40. Did you make any payment? A. I did not, no, sir, it had already been paid.

Mr. Guthrie: That is all.

No cross-examination.

H. BREMER.

Sworn by me,

JOHN A. SHIELDS,

Examiner.

244 Thomas O. Baker.

THOMAS O. BAKER, called and sworn as a witness on behalf of complainant, testified as follows:

DIRECT-EXAMINATION BY MR. GUTHRIE:

Q. 1. What is your name, age, residence and occupation? A. Thomas O. Baker; age, 29; residence, 256 Fifth Street, Jersey City; occupation, clerk, Adams Express Company.

Q. 2. How long have you been in the employ of the Adams Express Company? A. 12 years, with the exception of one month that I was out.

Q. 3. And are you acquainted with its business,
245 its wagons, drivers and helpers? A. To a certain extent.

Q. 4. What are your duties as clerk? A. I might as well explain that; I can explain that in very short order. About two months ago I was out for a month, when I returned I was put on the extra list, headed up as clerks; the duty of them is to do anything that the superintendent or chief inspector details them to. We are not carried on the regular clerk roll, we are carried on an extra clerk roll.

Q. 5. Now, on November 15th, 1910, did you have occasion to go to the corporation yard or
246 pound of the City of New York in 55th Street? A. No, sir.

Q. 6. Did you go to the Bureau of Sidewalks of the City of New York about that date? A. Yes, sir.

Q. 7. Now state what you did there on November 15th? A. In the morning I was given a memorandum with three numbers of wagons on it—Nos. 388, 494 and 413—and was told to go to Park Row and get permission to get them out. I went to Park Row—the correct number I believe was 21.

Q. 8. To the Bureau of Sidewalks of the City of New York? A. Yes, sir.

Q. 9. Bureau of Sidewalks and Incumbrances of

the City of New York? A. There is two bureaus; I went there, one was the Bureau of Incumbrance and the other was the Bureau of—I don't know—I seen street men coming in there with their hats on—highways, I think they called it, or something,—Bureau of Highways.

Q. 10. And now state what occurred. A. The Bureau of Highways, or whatever you call it; they gave me two wagons—they had two wagons there; they gave me a receipt, and I paid them $15; they gave me a receipt for the two wagons that were in 56th Street; they released them—that was for 248
the receipt, and that released the wagons.

Q. 12. State what occurred in regard to that in your conversation with the gentleman who was in charge of that office, in regard to the amount to be paid? A. I went in and I told them that I was from the Express Company and I had the money with me and I would like to get permits or whatever was necessary; we wanted to get our wagons; we had three wagons in the pound; the gentleman there referred to a large book he had and he said "I have only two." I said, "There must be three; I have it on the list here." And he looked there and he said there was $15, and I said I guess I 249
would have to pay him, and I gave him the money.

Q. 13. And did he give you a receipt for the amount? A. Yes, sir.

Q. 14. And is that the receipt which he gave you at the time? (Showing witness) A. Yes, sir, one just like that.

Q. 15. And the two wagons referred to in this receipt were the two wagons in the 56th Street pound or yard? A. Yes, sir, pound or yard.

Mr. Guthrie: I offer that in evidence.

Paper referred to marked Complainant's Exhibit No. 15, J. A. S., Ex'r, January 18th, 1911.

250 Thomas O. Baker.

Q. 16. Did you make any application at the same time for any other wagon? A. Yes, sir.

Q. 17. What occurred then? A. I says, where will I find out about the other wagon? He says—the gentleman there said wait a minute, I will see if I can help you. He got on the 'phone and 'phoned to somebody; then he asked me upstairs to see a Mr. Tolson or Telson, chief engineer upstairs. So I went around—when I first went to Mr. Tolson's office the gentleman there told me you had better see—he gave me a name that I can't recall; I
251 told them that I wanted to get a wagon, and whatever the charges were on it I would pay the money, and they told me you had better go around and see him. I went around to Mr. Tolson, the chief engineer, in the farthest office towards Broadway——

Q. 18. In what building? A. In the same building.

Q. 19. That is the building where the Bureau of Street Cleaning is? A. Yes, sir, if I remember correctly; and when I went around the second time they let me in; I went through one room and then there was a little bit of anteroom, and I went in
252 there and he had a table in there, and I sat down and talked to him about it, and he done quite a lot of—shook his head and wouldn't comment on it, he wouldn't have much to say; and I said, do you think if I went over and saw Mr. Oliver—somebody suggested that to me——

Q. 20. Who is Mr. Oliver? A. Why, I understood he had something to do with the license——

Q. 21. License Bureau? A. Yes, sir, License Bureau, over in the basement in City Hall. So I went over there and Mr. Oliver wasn't in, and some other gentleman there, he wouldn't say yes or no, or nothing; so I went—asked him where is the Mayor's

office, I will go up and see him; I said I am sent here to try to get the wagon out; all I want to do is to get the wagon out; and I went upstairs and there was one room, and I sat there for quite a while, and there was an officer there and he asks me what I wanted, and I told him I wanted to see the Mayor or his secretary or one of them, and after a while he led me in a place, and there was only one man at a desk in the room, I don't know what his name is, and we had a talk over it, and he says I don't know, but I would suggest that you get a license out for that wagon and bring a licensed 254
driver, and he says, I think you can get it.

Q. 22. Do you know the name of the person with whom you had this conversation? A. No, sir, I couldn't say that.

Q. 23. Was it in the Mayor's office or in the building where the Mayor's office is? A. Yes, sir.

Q. 24. In the City Hall? A. Yes, sir.

Q. 25. And you were shown by somebody in charge into this room? A. Yes, sir, by an officer.

Q. 26. By an officer? A. Yes, sir.

Q. 27. And you explained your wants to this man who was sitting at the desk? A. Yes, sir.

Q. 28. And he made the statement to you that you have just testified to? A. Yes, sir. 255

Q. 29. Did you ask for anybody, to see anybody, other than the Mayor? A. No, sir, the only thing I asked for is—I saw his chief clerk or secretary.

Q. 30. To the Mayor? A. To the Mayor.

Mr. Guthrie: That is all.

No cross-examination.

THOMAS O. BAKER.

Sworn by me,

JOHN A. SHIELDS,
Examiner.

256 It is stipulated and agreed that the wagon detained at the Rivington Street corporation yard was drawn by two horses, that these horses were sent by the police officers to the Mangin livery stable, and that the Adams Express Company paid $14 board on the release of those horses to them.

Mr. Guthrie: I offer in evidence the receipt by the Mangin Livery Stable for $14 board paid by the Adams Express Company on the release of the horses.

Paper referred to marked Complainant's Exhibit No. 16, J. A. S., Ex'r, January 18th,
257 1911.

Adjourned to Friday, January 20th, 1911, at 2.30 o'clock P. M., at the same place.

NEW YORK, January 20th, 1911, 2.30 P. M.

Met pursuant to adjournment.

Present: Counsel as before.

It is admitted between the parties, for the purposes of this case, that there are several thousand horse-drawn wagons and motor vehicles which use the streets of the City of New York, but which
258 wagons and vehicles and the drivers thereof are not licensed; that the City of New York has never taken any steps by ordinance or otherwise to compel the licensing of such wagons and vehicles or the drivers thereof; that such wagons and vehicles are employed in other businesses than that of expressmen or common carriers and are used in transacting for profit the business of their owners; that included in these wagons and vehicles are those employed by department stores, brewers, warehousemen, iron makers, grocers, coal dealers, builders, contractors and manufacturers; that the total number of wagons and vehicles of this class

which are not licensed greatly exceeds the number of wagons and vehicles used in the City of New York belonging to interstate express companies and engaged in interstate transportation, and that the number of vehicles required to be licensed under the existing ordinances of the City of New York is small relatively to the total traffic in the streets.

Mr. Guthrie: I offer in evidence one of the forms of license issued by the Buerau of Licenses of the City of New York in respect of the 40 wagons referred to in Exhibits 10 and 11. 260

Paper referred to marked Complainant's Exhibit No. 17, J. A. S., Ex'r, January 20th, 1911.

It is admitted, subject to correction, that this was the form of license in use in the Bureau of Licenses of the City of New York on its date, March 14th, 1910, and that the same form substantially is in use at the present time.

CHARLES GORDON MACKAY, called and sworn as a witness on behalf of the complainant, testified as follows:

DIRECT-EXAMINATION BY MR. GUTHRIE: 261

Q. 1. State your name, age, residence and occupation? A. Charles Gordon MacKay; 25 Linden Avenue, Jersey City; age, 45; general agent, New York, Adams Express Company.

Q. 2. How long have you been in the employ of the Adams Express Company? A. Over 30 years.

Q. 3. Will you state briefly in what capacities? A. Wagon boy, driver, messenger, clerk, agent, inspector, assistant to the general manager and assistant to the general agent—I have been nearly everything up to my present position.

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Q. 4. Have your duties mostly been in the New York department? A. Yes.

Q. 5. Have you caused to be prepared a statement of the amount of business done by the Adams Express Company in the City of New York from October 27th to November 16th, 1910, and a similar statement in regard to the businesses done in 1909 and 1908? A. Yes, sir.

Q. 6. Is the paper which I now show you a correct statement to your knowledge of the business done by the Adams Express Company at the dates
263 stated on that paper? A. Yes, sir.

Mr. Guthrie: I offer that in evidence.

Mr. Hale: Objected to as irrelevant and immaterial, and as not the proximate consequence of any act of the City or for which the City is chargeable.

Paper referred to marked Complainant's Exhibit No. 18, J. A. S., Ex'r, January 20th, 1911.

Q. 7. Have you caused to be prepared a statement showing the revenue of the Adams Express Company in the City of New York derived from its interstate packages for the various months in the year 1910 and also a similar statement as to
264 the years 1909 and 1908? A. Yes, sir.

Q. 8. And is the paper which I now show you a correct tabulation of the receipts of the Adams Express Company from its interstate business? A. Yes, sir.

Q. 9. In the City of New York? A. Yes, sir.

Mr. Guthrie: I offer that in evidence.

Mr. Hale: Objected to as irrelevant and immamaterial.

Paper referred to marked Complainant's Exhibit No. 19, J. A. S., Ex'r, January 20th, 1911.

Q. 10. Have you made a calculation in order to ascertain what the business of the Adams Express Company in the City of New York from interstate commerce should have been according to the normal increase of the business?

Mr. Hale: Objected to as incompetent, irrelevant and immaterial, and as calling for a mere guess or estimate of the witness.

A. Yes, sir.

Q. 11. Is such estimate or calculation based upon the exhibits which have been offered in evidence? A. Yes, sir.

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Q. 12. What would have been the normal amount of business which the Adams would have done in November and December, 1910, according to such normal increase?

Mr. Hale: The last objection is repeated.

A. Well, between 900,000 and a million dollars in October, November and December.

Q. 13. Will you please state what effect, if any, the cessation of business in New York or the inability to collect and deliver packages in New York has upon the business of the express company at other points?

M. Hale: Objected to as irrelevant and immaterial, as calling for a mere conclusion of the witness and as assuming facts not proved.

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A. It would reduce their business by nearly all the normal quantity that is sent to New York and by nearly all the normal quantity that is dispatched from New York.

Q. 14. Are you familiar with the wagons of the Adams Express Company? A. Yes, sir.

Q. 15. In what way are the wagons of the Adams Express Company marked? A. They are marked

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with a sign on each side reading, in large gold letters, "Adams Express Company," and immediately underneath they have "Southern Express Company," with also a number on each wagon.

Q. 16. In fact all the wagons of the Adams Express Company are plainly marked with the name of the express company? A. Yes, sir.

Q. 17. And they all have a number, have they? A. Yes, sir.

Q. 18. Will you state what is the general character of the wagons of the Adams Express Company
269 in use in the City of New York? A. I don't know that I just understand that question, Mr. Guthrie.

Q. 19. Well, you have about how many single horse wagons? A. Oh, well, we have probably 125 single horse wagons, about 90 to 95 automobiles, and between 250 and 300 double wagons.

Q. 20. Are the automobiles and the chauffeurs licensed by the State? A. Yes, sir.

Q. 21. These single horse wagons are of what general description? A. Well, they are small express wagons, capable of carrying something less than a ton.

Q. 22. Are they similar to the wagons in use by
270 the department stores of the City of New York? A. Yes, sir.

Q. 23. Are they also similar to the wagons in use by grocers and other merchants and dealers in the City of New York?

Mr. Hale: Objected to as calling for a mere opinion of the witness.

A. Yes, sir.

Q. 24. Are you familiar with the character of the delivery wagons in use by the large department and dry goods stores in the City of New York? A. Yes, sir.

Q. 25. Have you had frequent occasion to examine them? A. I see them in the streets every day in my life.

Q. 26. And are the single horse wagons in use by the Adams Express Company similar in construction to these wagons of the department stores and grocers and others? A. Yes, sir.

Q. 27. Now, your two horse wagons: What is their general character? A. Well, they are ordinary double express wagons, such as are used by our company and like those of the same general character as used by persons in the trucking and 272
dry goods business.

Q. 28. To your knowledge are they similar in construction to wagons in use by the department stores and dry goods merchants?

Mr. Hale: Objected to as calling for a mere opinion.

A. Yes, sir.

Q. 29. And also similar to wagons in use by grocers and other dealers in the City of New York? A. Yes, sir.

Q. 30. In general weight how do these two horse wagons compare with the wagons in use by grocers and contractors and manufacturers? A. Well, 273
they are probably lighter in the general run.

Q. 31. They are smaller than the brewery wagons, are they not? A. Oh, my, yes.

Q. 32. How do they compare with the wagons used by iron makers and contractors? A. Well, they are smaller and lighter wagons than they would have in general use in that line of business.

Q. 33. To your knowledge have any bonds ever been given by the Adams Express Company to the City with respect to any of its wagons or drivers

engaged in interstate commerce, and if so, to what extent?

Mr. Hale: Objected to as irrelevant and immaterial.

A. Only in so far as it relates to the 40 wagons that were licensed last year.

Q. 34. Were you aware at the time of the arrangement made with the Bureau of Licenses by your counsel, Messrs. Cravath, Henderson & de Gersdorff, and recited in the Exhibits 10 and 11? A. They told me of it.

275 Q. 35. And it was in pursuance of that that these bonds were given? A. Yes, sir.

Q. 36. And bonds were given for only the 40 wagons? A. That is all.

Q. 37. Were any bonds given for any of the other wagons of the Adams Express Company at any time? A. No, sir.

Q. 38. Have the wagons or vehicles of the Adams Express Company ever been inspected by the Bureau of Licenses or other department of the City of New York? A. No, sir.

Q. 39. And have the 40 wagons for which licenses were taken out been inspected? A. No, sir.

276 Q. 40. Were the premises of the Adams—any of the stables or other premises of the Adams Express Company ever inspected? A. No, sir.

Q. 41. Mr. MacKay, have you made an investigation to ascertain what would be the effect if you were to separate and conduct separately the local business as distinguished from the interstate business of the Adams Express Company in the City of New York?

Mr. Hale: Objected to as incompetent, irrelevant and immaterial, and as calling merely for an opinion and the prediction of the witness.

A. I outlined a plan several days ago, and found that the probable cost would exceed what we know to be the revenue now.

Q. 42. Will you please briefly describe the character of the automobiles that the Adams Express Company has in the City of New York? A. We have some gasoline cars that are capable of carrying a load of three tons, some that can carry two tons, some that will carry a ton and a half, and also a number of two ton and one ton electrics.

Q. 43. How do these compare in size and character with other similar vehicles in use for business 278
purposes in the city? A. Well, I judge they are for the same purpose, they are the same kind of a car that people buy from the same manufacturers that we do.

Q. 44. There are to your knowledge a large number of similar vehicles in use in the City of New York? A. Yes, sir.

Q. 45. In the various businesses? A. Yes, sir.

Q. 46. To your knowledge have the department stores a number of such vehicles? A. Yes, sir.

Q. 47. And does the same apply to grocers and other merchants? A. Yes, sir.

Q. 48. To what extent does the business of the 279
Adams Express Company consist of the carriage to the City of New York of perishable freight? A. The perishable freight is a very large percentage of our inbound business.

Q. 49. And what does that freight consist of generally? A. Well, some dressed meat, vegetables, fish—well, that is the bulk of it.

Q. 50. And you also carry milk? A. Not a great deal.

Q. 51. Do you carry eggs? A. Yes.

Q. 52. What is the effect or result of delay in respect of such freight? A. It spoils or deterio-

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rates, or so near to that, that almost the entire value of it is lost.

Q. 53. What would be the effect of a delay of 24 or 36 hours in the delivery of such freight? A. Well, it would mean that we would have to pay out nearly the entire value of it in claims.

Q. 54. During the period of the recent strike from October 27th to November 16th, did you receive perishable freight? A. Yes, sir.

Q. 55. To what extent, if any, was that freight spoiled or destroyed?

281 Mr. Hale: Objected to as irrelevant and immaterial and not a matter with which the City is in any way chargeable.

A. Why, we had probably two or three carloads that had to be thrown out as useless, spoiled, and approximately 10 carloads that had to be sold here or sent to other cities and sold at forced sale; in other words, to take what we could get for it.

Q. 56. Did any part of this perishable freight coming to New York have to be sold here, and if so, under what circumstances?

Mr. Hale: The same objection.

A. We placed a quantity of it on barges and sent it to Brooklyn to be sold.

282 Q. 57. Did you also ship back any perishable freight, and if so, to what extent? A. We shipped back several carloads to Philadelphia from Jersey City, and to New Haven and Bridgeport from our depot at 48th Street and Madison Avenue, and we also sent back from our depot at Weehawken a very considerable quantity of freight to points on the Ontario & Western Road.

Q. 58. What was the reason or cause for your sending or having it sent back, these shipments? A. We couldn't make delivery here.

Q. 59. Is it practicable or possible to carry on

the interstate express business of the Adams Express Company without the use of wagons in the City of New York for collecting and delivering packages?

Mr. Hale: Objected to as irrelevant and immaterial, and because the City is in no way chargeable with the results of the recent strike.

A. No, sir.

Q. 60. Mr. Zimmerman testified that a number of claims growing out of the recent strike had been presented to the Adams Express Company. Have you personal knowledge of any facts in relation to 284
that, and if so, please state them?

Mr. Hale: Objected to as irrelevant and immaterial, and this objection is to apply to all questions touching upon the recent strike and its consequences.

A. I have personal knowledge of the fact that we received in our claim bureau more than 500 claims which are either directly or indirectly chargeable to strike conditions, and a record of inquiries made in our correspondence bureau indicates that we will have a couple of thousand or more additional claims.

Q. 61. Did you have personal knowledge of the 285
recent strike in October and November, 1910? A. Yes, sir.

Q. 62. Prior to the men going out on strike, did you or did any of the officers of the company, so far as you know, have any knowledge of their intention? A. No; I don't believe they had any intention.

Q. 63. What do you mean by that last statement? A. Why, I mean the men were not organized until after they had struck, and then it took them all of one day to make up their minds just what they were going to do.

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Q. 64. But prior to their going on strike had you or any officer of the Adams Express Company, so far as you know, any notice or information of the proposed strike? A. No, sir.

Q. 65. Had any demands been made upon you for redress of any kind? A. Not a word.

Q. 66. How many of your men went out on strike in this manner? A. Well, between a thousand and fifteen hundred.

Q. 67. Did you make any efforts to secure drivers or helpers in their place in the City of New York?
287 A. Yes, sir.

Q. 68. Will you please state what you did? A. Well, we advertised and made personal—at least made search through our representatives, but we did not succeed in securing any men.

Q. 69. When you say you advertised, in what papers? A. In the daily papers. I can't name them, but I can find out what they were.

Q. 70. And was it an advertisement for drivers and helpers? A. Yes, sir.

Q. 71. And with what result? A. Practically no result.

Q. 72. Well, did any applications come as a result of the advertisement? A. We had 18 people
288 one day that I recall.

Q. 73. And how many drivers or helpers were you able to get out of those 18? A. Well, we didn't get more than four or five.

Q.74. From your experience are you able to say whether it would be practicable to secure six or seven hundred drivers competent to drive your wagons either as drivers or helpers in the City of New York on short notice?

Mr. Hale: Objected to upon the further ground that it calls merely for the opinion of the witness.

A. Well, I believe—I am sure we could not get them.

Q. 75. You some time ago testified that several carloads of perishable freight had been thrown out. What did you mean by that expression? A. Well, I meant that some of it was taken by the Health officers and some was carted to dumping grounds.

Q. 76. And dumped there? A. Yes.

Q. 77. Has the Adams Express Company any storage or warehouse facilities in Jersey City or Weehawken or in New York for the storage of freight that may accumulate as the result of inability to deliver in the City of New York? 290

Mr. Hale: Objected to as assuming a fact not shown to exist and for which the City is not responsible.

A. No, sir.

Q. 78. In the ordinary conduct of the business of the express companies in the City of New York is there any call or necessity for such storage or warehouse facilities? A. No, sir.

Q. 79. Can you explain why not? A. Why, yes; if we stored goods we would not be in the express business. We have to take them and deliver them immediately. We deliver 24 hours a day where we can. 291

Q. 80. And are the goods which you receive on the passenger trains as testified to taken immediately from the trains and then delivered? A. Yes, sir.

Q. 81. And the same applies to the goods that you collect in the City of New York: They are taken immediately and put on trains for shipment to other points? A. Yes, sir.

Q. 82. And is it the fact that the gist of the express business is this promptness and expedition of collection and delivery? A. Yes, sir.

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Q. 83. What knowledge have you of the seizure and impounding during the recent strike of any wagons of the Adams Express Company in the City of New York, or of the arrest of their drivers by the police, whilst the wagons and drivers were engaged in interstate commerce? A. Late in the afternoon of November 9th our wagon No. 388—it was loaded with five boxes from Danbury, Connecticut, going to the Panama Railroad Commission, I think the commissary department. The goods were held in, I think, the 51st Street station house until they
293 were returned to us. On the same day our wagon 413, carrying a couple of hundred packages from various points in the south and west, was seized by the police and the wagon was eventually taken to the Rivington Street yard.

Q. 84. What became of the freight on the wagon? A. Well, now, I can't cover that point clearly; I am sure it was taken to a police station, but I can't state of my own knowledge.

Mr. Hale: I object to the statement of what the witness is sure of unless it is within his personal knowledge; the witness is requested to confine himself to what he personally knows.

Q. 85. Were you given any information as to
294 the disposition of the packages in that wagon, and if so by whom and in what manner?

Mr. Hale: Objected to as calling for hearsay.

Q. (Continued) What did you do? A. I can't answer the question with regard to that particular wagon without referring to my notes.

Q. 86. You might refer to them. (Witness refers to notes) Were these notes made by you at the time? A. They were made by either myself or one of my staff; we all sat at a table and received the telephone reports; sometimes I wrote as I received

by telephone and sometimes called to a man alongside of me.

Q. 87. And then he would enter it in this book that you have? A. Yes, and he wrote as I spoke.

Q. 88. And the entries made were made at the time, to your own knowledge? A. Yes, sir.

Q. 89. Now, you might refer to these notes and let us know what happened in regard to the contents of that wagon that was taken to the Rivington Street yard?

Mr. Hale: I object to the statement of any telephone messages from unknown and unnamed persons to this witness, pure hearsay, and unsworn declarations not binding upon the defendant 296

A. (Referring) The freight was taken to the 11th Street station.

Q. 90. Did you communicate in respect of that freight with any official of the City or any member of the police force, and if so with whom? A. My notes do not show, and I cannot say just what we did in this particular case.

Q. 91. Well, is there any case of the seizure or impounding of a wagon of the Adams Express Company that you recall? A. Yes, sir.

Q. 92. What was the number of that wagon? A. On the same afternoon we had wagon 494 en route from our Furman Street depot in Brooklyn to our 42th Street depot in New York, loaded with 131 pieces of freight. The wagon was seized by the police and the goods placed in the 51st Street station house where they remained all night and all the next day. 297

Mr. Hale: I object to the answer as obviously hearsay, and request the witness to state whether he knows those facts of his own knowledge.

The Witness: I didn't see them; they were reported to me.

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Mr. Hale: The motion to strike out the answer is renewed.

Q. 93. Did you give any instructions to any one, and if so, to whom, in regard to the packages of freight which you have testified were in either of these police stations? A. I talked with Mr. Vandiver.

Q. 94. Did you give any instructions to any one, and if so, to whom, in regard to the removal of such freight?

Mr. Hale: Objected to as relating to a transac-
299 tion between employees of the Adams Express Company to which the City and other defendants are strangers and by which they are not bound.

A. I gave instructions to Noble, our agent at the 48th Street depot; I also gave instructions to Minard, the man who accompanied the shipments.

Q. 95. What became of the wagons, if you know? A. Yes; wagons 388 and 494 were taken to the 56th Street corporation yard; wagon 413 was taken to the corporation yard at Rivington Street, where it now is.

Q. 96. Did you give any instructions to any one and if so to whom to secure the release of those
300 wagons? A. Yes, sir.

Q. 97. To whom? A. I gave instructions to one of our wagon inspectors named Bremer and another one named Baker, and also to Liebner and Platt of Mr. Vandiver's staff.

Q. 98. And did you supply them with money to pay the poundage on the wagons and the board of the horses? A. We paid $15 poundage for the two wagons we got and we paid—I can't state the exact sum we paid for the board of the horses; I think I have that in a memorandum, though.

Q. 99. Can you recall the names of the drivers

and helpers on these three wagons? A. I have a memorandum of that; I can't recall the names.

Q. 100. And were they arrested at the time of the seizure of the wagons? A. They were arrested, but they were not detained any further than the police station.

Q. 101. Did you personally communicate with any official of the City of New York in regard to the release of this freight or these wagons and the horses by telephone or otherwise? A. I don't think I did—I did write.

Q. 102. To whom? A. That I can't say until I 302
look over my copies.

Mr. Guthrie: That is all.

CROSS-EXAMINATION BY MR. HALE:

x-Q. 103. Who attends to the employment of the drivers and helpers of the wagons used in the city? A. The superintendent of wagon service, or his assistant.

x-Q. 104. And who is he? A. Charles E. Wilson is the superintendent of wagon service; Robert H. Peterson is the assistant—chief inspector, I should have said, chief inspector of wagon service.

x-Q. 105. Are you at all familiar with that branch
of the business? A. Yes, sir. 303

x-Q. 106. Is there a waiting list of applicants for employment? A. No, sir.

x-Q. 107. How is it kept up? A. He receives applications from day to day.

x-Q. 108. And what does he do with them? A. Hires them when he needs them; if not, tells them to call again.

x-Q. 109. And doesn't keep a list of applicants? A. Perhaps I had better qualify and say I don't think he does.

x-Q. 110. What is your best information and

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belief on that subject? A. I don't think he keeps any list.

x-Q. 111. No reason to think otherwise? A. No.

x-Q. 112. You have testified that in your opinion the company could not obtain several hundred drivers upon short notice. What were the conditions that you had in mind in making your answer? A. Well, the condition that I had in mind is we would have to produce several hundred drivers in a short space of time, if I understand your question properly.

305 x-Q. 113. What do you mean by short space of time? What period? A. Well, a day or two.

x-Q. 114. And do you mean that under no circumstances could the company obtain the services of, say, 200 drivers within a day or two? A. They could obtain them all right, but I don't think they could obtain them here in the city.

x-Q. 115. Why not? What leads you to doubt it? A. Well, the experience I have just had.

x-Q. 116. You mean the experience during the late strike? A. Yes, sir.

x-Q. 117. Have you had any other experience in that line upon which you based your answer? A.

306 Well, our applicants do not come in so rapidly as that ordinarily.

x-Q. 118. Have you any information as to the number of daily applicants for employment to your company? A. Not just now.

x-Q. 119. What information have you recently had upon that subject? What is your last information? A. Well, I haven't had any direct information.

x-Q. 120. Was all your information in regard to the arrests and the impounding of the wagons derived by you over the telephone in the manner described? A. Yes.

Mr. Hale: I now move to strike out all the testimony of this witness with reference to the seizure and impounding of wagons upon the ground that the same is mere hearsay and not within the knowledge of the witness.

x-Q. 121. Why is the name "Southern Express Company" painted upon your wagons in addition to the name "Adams Express Company?" A. We are the northern connection of the Southern Express Company.

x-Q. 122. And handle their business as it comes north? A. Yes, sir. 308

x-Q. 123. How does the number of express wagons in daily use in the city compare with the number of wagons used in the iron business, for example? A. That I can't tell you.

x-Q. 124. How does the weight of the average express wagon used in the City compare with the weight of the average grocer and butcher wagons to which you have referred? A. Well, I should class them—well, that is a hard question to answer.

x-Q. 125. As a matter of fact, the grocer and butcher wagons are in a way far much lighter wagons than the average express wagon, isn't that correct? A. The grocer and butcher wagons used 309 for retail trade are, but the grocer and butcher wagons used for wholesale trade are not, they are heavier.

x-Q. 126. And how does the number of butcher and grocer wagons used in the wholesale trade compare with the total number of express wagons in daily use in the City? A. I don't know.

x-Q. 127. How does the number of express wagons in daily use compare with the delivery wagons of department stores, if you know? A. Well, I don't know, but I should judge there are as

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many department store wagons if not more than there are express wagons.

x-Q. 128. And how do these wagons compare in weight? A. I should judge they are about the same class of wagons.

x-Q. 129. Are you speaking of the one or two horse wagons? A. Well, of both.

x-Q. 130. How do the heavier class of wagons used by the department stores compare in number with the heavier class of express wagons? A. Probably there are more express wagons, heavier.

311 x-Q. 131. Referring now to the memoranda prepared under your direction and marked Exhibits 18 and 19, how were these memoranda prepared and from what sources? A. They were prepared in our cashier's office, from the revenue returns.

x-Q. 132. What do these various sums in dollars contained in these exhibits represent or stand for? A. The money that we have collected.

Mr. Guthrie: For freight?

The Witness: For freight charges.

x-Q. 133. That is to say it represents gross receipts for freight charges on matter originating in New York? A. In and out of New York.

312 Mr. Hale: That is all.

REDIRECT-EXAMINATION BY MR. GUTHRIE:

Rd-Q. 134. You have been asked in regard to the ability to get men in the City of New York to man your wagons. Will you please state whether it would be practicable to procure men from other places than New York, and if so what could be done in that respect? A. I think it would be practicable; I think we could man our wagons in very likely less than two days.

Rd-Q. 135. Would it be practicable to transfer

to New York drivers and helpers employed in other cities? A. Temporarily, yes.

Rd-Q. 136. You were asked whether in testifying that it would be difficult to employ on short notice a large number of men in the City of New York, whether you had any particular time in mind. Would your testimony as to the difficulty in procuring men apply to the present time when no strike is pending? A. Oh, we can get plenty of men now for our purpose from day to day, there is no trouble about that.

Rd-Q. 137. But if you had now under present 314
conditions to supply seven or eight hundred men would that be practicable? I mean if your present drivers should strike to-morrow, would it be practicable to supply their places in the City of New York within a day or two?

Mr. Hale: Objected to as leading.

A. No, sir.

Rd-Q. 138. I understood you to state that under no circumstances could the company obtain the necessary number of drivers in the City of New York within a day or two. Would that condition apply to-day if there should be a strike at once, now?

315

Mr. Hale: Objected to as incorrectly summarizing the testimony.

A. We couldn't get them in the City of New York within a day or two.

Rd-Q. 139. You were asked if your information in regard to the seizure and impounding of your wagons and freight in your charge by the police came to you by telephone and you answered yes. Did you have any other information communicated to you on the subject other than by telephone? A. I had personal reports later, but I understood Mr.

Hale's question to relate to the report that they made at the time.

Rd-Q. 140. But you had personal reports later from employees of the Adams Express Company? A. Yes, sir.

Rd-Q. 141. And you were in charge as the superior officer of that branch of the business, were you not? A. Yes, sir.

Rd-Q. 142. Did the drivers who were on those wagons Nos. 388, 413 and 494 report to you?

Mr. Hale: Objected to.

317 A. No, sir.

Rd-Q. 143. Did any of them? A. No, sir.

Rd-Q. 144. Who did report to you? A. The report was made by Mr. Noble, Mr. Wilson and Mr. Vandiver.

Rd-Q. 145. Who is Mr. Noble? A. Mr. Noble is agent of our 48th Street depot.

Rd-Q. 146. And what is his full name? A. James S.

Rd-Q. 147. And he is in charge of the 48th Street depot? A. Yes, sir.

Rd-Q. 148. And Wilson? A. Is the superintendent, wagon superintendent.

Rd-Q. 149. To whom you have already referred?

318 A. Yes, sir.

Rd-Q. 150. And where is his place? A. 309 Canal Street.

Rd-Q. 151. And Vandiver is the counsel in charge of criminal cases for the Adams Express Company? A. Yes, sir.

Rd-Q. 152. And these three made reports to you? A. Yes, sir.

Rd-Q. 153. As to the seizure and impounding of these three wagons?

Mr. Hale: I object to the statement of the con-

tents of these reports either in the question or by the witness.

Rd-Q. 154. Well, then, state what information you got from Mr. Noble, for example, in regard to the seizure or impounding of any wagons of the Adams Express Company during the recent strike?

Mr. Hale: Objected to as incompetent, irrelevant and immaterial, and as calling for hearsay and the declaration of one not authorized to bind the defendants as to a past transaction.

A. Mr. Noble told me of the seizure of wagon 388, and also of the seizure of wagon 494. 320

Rd-Q. 155. And now, did you give him instructions in respect thereto? A. Yes, sir.

Rd-Q. 156. Who informed you in regard to the seizure of wagon 413? A. Mr. Wilson.

Rd-Q. 157. And did you give him instructions in regard thereto? A. Yes, sir.

Rd-Q. 158. Who informed you in regard to the contents of the wagons 388 and 494? A. Mr. Noble.

Rd-Q. 159. And did you give him instructions in regard to the disposition of such freight? A. Yes, sir.

Rd-Q. 160. Who gave you information in regard to the contents of wagon No. 413? A. Mr. Wilson. 321

Rd-Q. 161. And did you give him instructions in regard to that? A. Yes, sir.

Rd-Q. 162. And you were their superior officer? A. Yes, sir.

Rd-Q. 163. You have been asked in regard to the Southern Express Company. That is an express company engaged in interstate commerce from the south and southwest of Washington, is it not? A. Yes, sir.

Rd-Q. 164. It has no delivery service in the City of New York? A. No, sir.

322 Charles Gordon MacKay.

Rd-Q. 165. And the Adams is its connecting line? A. Yes, sir.

Rd-Q. 166. You were interrogated on cross-examination in regard to the comparison between your wagons and those of the department stores in the City of New York. One of your answers was not very distinct. Was I correct in understanding you to intend to testify that the character of the wagons of the department stores in the City of New York as to construction and size and weight was about the same as the wagons in use by the Adams Ex-
328 press Company?

Mr. Hale: Objected to as leading.

A. Yes, sir.

Mr. Guthrie: That is all.

RECROSS-EXAMINATION BY MR. HALE:

Rx-Q. 167. Did you mean to testify that it is easier to get drivers from some other city than it is to get them from the City of New York? A. I wouldn't put it just that way. If we had to raise a large number of men in a very short time we could send outside and draw them from various sources temporarily.

Rx-Q. 168. What sources, for example? A. Well,
324 Philadelphia, Baltimore, Washington, Pittsburgh.

Rx-Q. 169. You mean men already in your own employ in those cities? A. Yes, in our employ or out of it; in our employ preferably.

Rx-Q. 170. How would you fill the places in these other cities if you brought your own employees from those cities to New York? A. Well, we wouldn't clean out any one town entirely; take a few men from each place.

Mr. Hale: That is all.

W. J. Minard. 325

W. J. MINARD, called and sworn as a witness on behalf of complainant, testified as follows:

DIRECT-EXAMINATION BY MR. GUTHRIE:

Q. 1. State your name, age, residence and occupation? A. W. J. Minard; 14 Rochester Avenue is my address; my occupation, clerk for the Adams Express Company.

Q. 2. How long have you been in the employ of the Adams Express Company? A. Well, in the neighborhood of three years.

Q. 3. Did you have anything to do with a wagon of the Adams Express Company that was seized or impounded during the recent strike in October or November, 1910? A. Yes, sir, Adams wagon No. 494. 326

Q. 4. Will you please state what you had to do with it, what knowledge you have upon that subject? A. Well, I acted as a guard for the valuables that were carried on this wagon.

Q. 5. Where did those valuables come from? A. From the Bedford depot in Brooklyn.

Q. 6. And do you know whether they were local or interstate shipments? A. They were—the majority of them were Eastern freight.

Q. 7. Interstate shipments? A. Yes, sir. 327

Q. 8. What character of freight was it? A. What do you mean?

Q. 9. Well, were they ordinary merchandise packages or valuable? A. No, sir, all valuables.

Q. 10. What do you mean by valuables? A. Why, such as shoes and everything with a valuation of 50 or more.

Q. 11. Now, what occurred? Did you accompany the wagon? A. Yes, sir.

Q. 12. What date was this? A. About November 9th.

Q. 13. 1910? A. Yes, sir.

Q. 14. State what occurred? A. Why, I was seated on the wagon——

Q. 15. Who was with you? A. The driver and another man with him.

Q. 16. The helper of the wagon? A. The helper of the wagon, yes, sir.

Q. 17. Was it a two horse wagon? A. Yes, sir. And we had driven to 48th Street and Fifth Avenue and we had to stop there while traffic was passing through 48th Street, and a stout policeman, I think he was a roundsman, came over. He
329 asked the driver if he had a license and the driver said no, he had no license, and he said come along with me then. So this roundsman called another policeman that was nearby and told him to take the team up Fifth Avenue to about 53rd Street,—I think we went through 53rd Street to Third Avenue or Lexington Avenue, and down Lexington to 51st Street, through 51st Street to the police station.

Q. 18. What police station? A. The 51st Street station—well, I thing it was the 29th Precinct.

Q. 19. That is you and the driver and the helper together with the wagon and this policeman? A.
330 Yes, sir.

Q. 20. Now, state what happened? A. And this roundsman came along, then shortly afterward, went into the police station, and spoke to the captain, and then he, the captain, gave orders to several policemen in the station to take the stuff off the wagon and pile it in the police station.

Q. 21. And what was done then by the police? A. There were about four policemen, and they piled all the stuff in the police station, took everything off the wagon, and then the roundsman,—he looked like it, he had two marks on the side of his

coat,—took an inventory of the freight, took it all down.

Q. 22. How many packages were there? A. As far as I remember there was in the neighborhood of 139, 139 or 140, somewheres around that.

Q. 23. Did he give you a receipt for the packages? A. No, sir.

Q. 24. What did he do with this inventory that he took? A. The captain took charge of it.

Q. 25. And was this done under the direction of the captain? A. Yes, sir.

Q. 26. What became of the driver and the 332
helper? A. Why, they went home.

Q. 27. Was any charge entered on the blotter against them? A. Not that I know of; no, sir.

Q. 28. What became of the wagon after it had been emptied by the police? A. Why, the captain asked if there were any policmen there that could drive a team and two of them volunteered, and they both got on the wagon and drove off.

Q. 29. And that was the last you saw of the wagon? A. The last I saw of the wagon, yes, sir.

Q. 30. Did this wagon have any name on it? A. The Adams Express Company, yes, sir.

Q. 31 And it was a wagon in daily use by the 333
the Adams Express Company to your knowledge? A. Yes, sir.

Q. 32. Now, when did you next see the freight that had been taken into the station house? A. Well, I stayed there. The captain asked me if I didn't think I ought to stay there and take charge of the freight until some one came to take it away or some representative of the Adams Express Company came there. I told him I would.

Q. 33. Then what did you do ? A. Then I stayed there until some light haired gentleman, who I think was a representative of the Adams Express

334 W. J. Minard.

Company came there and spoke to me, and asked me for the valuable sheets which I held, and he told me that he would take charge of them, and I turned them over to him, and he told me to stay there, that he was going to the 48th Street depot to see Mr. Noble and he told me I should wait there until he came back, which I did. He came back the second time; he had a little talk with the captain,—the captain was getting ready to go home,—he talked to him for a while and he told me that he was going to Canal Street to see Mr. Wilson, and I
335 should wait, and I waited for about an hour and so he didn't come back and I called up Mr. Noble—

Q. 34. Did you give him the list of the shipments which you had? A. Yes, sir.

Q. 35. And what became of that list, do you know? A. No, sir.

Q. 36. Will you please look at the papers now shown you and state whether or not this is the original waybill or waybills which you had in your possession at the time of the seizure and impounding of the packages by the police as you have testified (handing to witness)? A. Yes, sir.

Q. 37. And does that contain a true list of the packages as transferred by the police from your
336 wagon into the police station? A. Yes, sir.

Q. 38. And you checked the same at the time in the police station? A. Not in the police station, I didn't myself, no, sir.

Q. 39. But this is the waybill representing those shipments at that time? A. Yes, sir.

Mr. Guthrie: I offer that in evidence; I offer the whole bunch.

Papers referred to marked as one exhibit, Complainant's Exhibit No. 20, J. A. S., Ex'r., January 20th, 1911.

Q. 40. It appears from this Exhibit No. 20 that

some of these waybills are dated October 27th, others are dated October 28th, others October 29th and others October 31st, November 1st, November 3rd, November 4th, November 7th and November 9th. Can you explain how it happens that these waybills bear these different dates? A. No, sir.

Q. 41. Have you any knowledge in regard to these waybills representing accumulations of freight in Brooklyn?

Mr. Hale: Objected to as leading.

A. No, sir.

Mr. Guthrie: That is all. 338

Cross-examination waived.

WM. J. MINARD.

Sworn by me,
JOHN A. SHIELDS,
Examiner.

CHARLES GORDON MACKAY, recalled:

DIRECT-EXAMINATION BY MR. GUTHRIE:

Q. 1. Mr. MacKay, you have heard the testimony of the witness Minard, have you not? A. Yes, sir.

Q. 2. Referring to Complainant's Exhibit No. 20, can you explain how it is that there are a number of separate waybills on separate dates? A. 339
Yes, sir.

Q. 3. Please state the reason? A. That represented an accumulation extending from the first day of the strike; it was entered on those sheets from day to day, and when we finally had a man who was competent to take it to the depot it was all sent on that one wagon.

CROSS-EXAMINATION BY MR. HALE:

x-Q. 4. What caused the accumulation? A. Well, the freight simply stayed there.

x-Q. 5. Because of the strike? A. Yes, sir.

Adjourned to Monday, January 23rd, 1911, at 2.30 o'clock P. M.

340 Charles Gordon MacKay.

NEW YORK, January 23rd, 1911,
2.30 P. M.

Met pursuant to adjournment.

Present: Counsel as before.

It is admitted, for the purposes of this case, that the Adams Express Company, between October 28th and November 15th, 1910, published the following advertisement in the following newspapers:

"Expressmen wanted—drivers and helpers. Good salaries. Apply Adams Express Co., 309 Canal Street."

341 Published between October 28th and November 15th, 1910, in the following daily newspapers:

Herald	5 times
Sun	14 times
Tribune	16 times
World	15 times
American	15 times

Also published repeatedly in Globe, Mail, Press, Times and Telegram.

Mr. Guthrie: I offer in evidence a statement showing the number of wagons in ordinary use by the Adams Express Company in the conduct of its
342 business in the City of New York, showing where such wagons are stabled, and the character of such wagons, whether doubles, singles or autos, and the number of drivers, helpers, motormen, conductors and third men.

Paper referred to marked Complainant's Exhibit No. 21, J. A. S., Ex'r, January 23rd, 1911.

CHARLES GORDON MACKAY, recalled:

DIRECT-EXAMINATION BY MR. GUTHRIE:

Q. 1. Are you able to state whether or not any drivers or helpers of the Adams Express Company were ever arrested by the police or officials of the

City of New York for driving without an express license, except during the recent strike? A. There were no such arrests.

Q. 2. Are you able to state whether any wagons of the Adams Express Company have ever been impounded or seized by the police or city authorities on the ground that they were not licensed as express wagons, other than during the recent strike? A. There have been no such seizures.

Mr. Guthrie: That is all.

CROSS-EXAMINATION BY MR. HALE:

344

x-Q. 3. How are you able to state the facts as you have stated them in response to the last two questions? A. Well, if there had been any such seizures a report would have been made to me, and I know that I have received no such report.

x-Q. 4. Your testimony, then, is based upon the fact that you received no reports of such arrests, is that correct? A. Yes, sir.

Mr. Hale: That is all. Motion is made to strike out the answers of the witness upon the ground that it is not the statement of any fact within the personal knowledge of the witness.

345

REDIRECT-EXAMINATION BY MR. GUTHRIE:

Rd-Q. 5. To your knowledge has there ever been any interference with the conduct of the business of the Adams Express Company because of the arrest of its drivers for not being licensed or because of the seizure and impounding of its wagons, except during the recent strike? A. Except during the strike, that is all.

Rd-Q. 6. And in the ordinary course of the business of the Adams Express Company would such incidents be reported to you? A. Yes, sir.

346 Charles E. Wilson.

Rd-Q. 7. Would it be the duty of your subordinates to make those reports to you? A. Yes, sir.

Rd-Q. 8. And be part of your duty to investigate any such cases of interferences with the business? A. Yes, sir.

C. G. MacKay.

Sworn by me,
JOHN A. SHIELDS,
Examiner.

CHARLES E. WILSON, called and sworn as a witness on behalf of the complainant, testified as fol-
347 lows:

DIRECT-EXAMINATION BY MR. GUTHRIE:

Q. 1. You will state your name, age, residence and occupation? A. Charles E. Wilson; 56 years of age; 78 Washington Street, Morristown, New Jersey; superintendent, wagon service, Adams Express Company, New York.

Q. 2. How long have you been in the employ of the Adams Express Company? A. About 30 years.

Q. 3. And generally in what capacities? A. As a driver in Newark; clerk in Newark; agent, Long Branch; as an inspector in New York City and superintendent of wagon service.

348 Q. 4. What are generally your duties and functions as superintendent of the wagon service of the Adams Express Company? A. To hire a force to operate the wagons; attend to and pass on all suspensions of delinquents; and furnish each office with a certain number of wagons, and to see that they are properly manned; see that schedules are covered in the handling of the freight in and out of New York City.

Q. 5. Are you familiar with the character of vehicles owned and used by the Adams Express Company? A. Yes, sir.

Q. 6. And you have been for—— A. Eleven years.

Q. 7. Do you remember that during the recent strike the Adams Express Company advertised for drivers and helpers? A. Yes, sir.

Q. 8. Will you please state as briefly as practicable with what result? A. Well, as near as I can tell, we had about 25 applicants, and accepted about three of the 25, and I am not sure that we put two of the 25 to work; we gave the three blanks to fill out and bring around the next day.

Q. 9. Why were they not all accepted? A. Well, 350
we didn't like their general appearance; before we would let them in the place, that is at 309 Canal Street—they had congregated at the door; somebody would come in and say, there is a lot of people out there looking for a job; we would go and look through the window, and with my experience in taking on help,—while I make mistakes, possibly,—I can tell pretty well from the general appearance of the men whether we want them in our line.

Q. 10. Did you make efforts, and if so what efforts, during the strike to fill the places of the strikers in the City of New York?

Mr. Hale: Objected to as irrelevant and immaterial, and not a matter in which the defendants 351
are at all concerned.

A. By the advertisements placed in the papers, and any one that would come along looking for a position in the regular way.

Q. 11. What was the result? Were you or were you not able to procure the necessary competent help? A. We were not.

Q. 12. What is the average number of drivers and helpers that the Adams Express Company employs from month to month, approximately? A. New help taken on?

352 Charles E. Wilson.

Q. 13. No, the whole help? A. The whole help? Well, it is—I think there is about eight or nine hundred men on the regular roll.

Q. 14. And what do they consist of? A. Drivers, helpers, third men—that is where there is a third man on the wagon.

Q. 15. Motormen? A. Motormen and helpers or conductors on the cars.

Q. 16. What do you mean by the conductors? A. Well, on a wagon we call the driver the driver, that is the man in charge of the wagon, and the
353 helper is the man that takes the tail end of the wagon, and to guard the wagon; on the automobile for some reason the helper has been called the conductor and the chauffeur, the motorman or driver, just whichever you might call the one on the front end that operates the machine.

Q. 17. So that the expression regular conductors on the Exhibit 21 simply means the helpers on automobiles? A. Yes, sir.

Q. Have you also what may be termed an extra list? A. Yes, sir.

Q. 19. And about how many men are carried on what you term the extra list? A. We consider that pretty well filled up when we have 150, and we
354 carry from 125 to 150 all the time; if there is that much help, that we think will do for everybody.

Q. 20. Will you please state as briefly as practicable your method in the selection and employment of drivers and helpers? A. Every morning,—nearly every morning,—we have a line formed of applicants outside of the office door; they come in the office one at a time, state their business, and if we like their appearance we talk with them, and if not we say nothing doing, turn them out; by that I mean that their general appearance indicates that they never could be drivers or wagon men; and if we like them we ask

for their letters, if they show them and they look all right the man is given a blank application and told to bring it in the next morning. The next morning he brings it in and he is told to come in in five days, and if we don't hear from the surety department in five days that this man is rejected, we give this man a letter to an inspector at one of our stables, and he is there as an extra, reporting daily until for some reason he is changed to some other stable, and when there is a vacancy he is put on the regular roll as a helper.

Q. 21. Are these extras employed frequently to help on the wagons? A. Yes, sir. 356

Q. 22. So that they are employed from time to time or until you can give them regular employment? A. Yes, sir, and we try not to have more than we can give a fair amount of work to induce them to stay until the time when we can give them regular work, not to have too many of them.

Q. 23. So that they are employees who are irregularly employed whilst waiting for the permanent or regular employment? A. Yes, sir.

Q. 24. You have referred to an application blank. Is that the form in use by the Adams Express Company? (handing to witness). A. Yes, sir. 357

Q. 25. And is it the invariable custom to have the applicant for the position of driver or helper or motorman fill out such an application? A. Yes, sir.

Q. 26. And then what is done with this application? A. Sent to the surety bureau.

Q. 27. Have you a bureau in the Adams Express Company where investigation is made as to the references and history of all men applying for employment? A. But Mr. Zimmerman can tell you more about that, the method.

Q. 28. But you have such a bureau? A. Yes, sir.

Q. 29. And these applications are sent to that bureau? A. Yes, sir.

Q. 30. And if within five days you do not hear anything against the applicant you then put him on your extra list? A. Yes, sir.

Mr. Guthrie: I offer that form of application in evidence.

Paper referred to marked Complainant's Exhibit No. 22, J. A. S., Ex'r, January 23rd, 1911.

359 Q. 31. Mr. Wilson, how do your single and double wagons of the Adams Express Company compare in size and weight and general character with the wagons of the department stores, grocers and wholesale and retail merchants in the City of New York? A. How do they compare with other wagons of department stores, wholesale grocers and so forth? Well, we have some that will compare with all of them; for instance, take the singles, our single wagons will compare for size and so forth and capacity with single wagons of department stores; and our doubles—while those department stores do not use the exact style of double wagon that we do, they have a wagon with more of a plat-

360 form build, but about the same weight.

Q. 32. About the same width? A. Well, there might some be a little wider than we have. Our three windlass trucks, they compare with wholesale grocers' ordinary trucks; ours are not the heaviest kind of trucks, they carry three ton, maybe 7,000 with ease, where an ordinary truck here in town for a wholesale grocer will carry anywhere around four ton, Leggett's, for instance.

Q. 33. Am I correct in stating that all the drivers and helpers are under your supervision? A. Yes, sir.

Q. 34. Can you state whether or not prior to the recent strike in October and November, 1910, any of the drivers of the Adams Express Company were ever arrested because they did not have express licenses in the City of New York?

Mr. Hale: Objected to as calling for matters as to which the witness cannot be personally informed.

A. I can; for the last 11 years I know for a fact.

Q. 35. You know what for a fact? A. That there has never been a driver or wagon under arrest for being without a license.

Q. 36. And by a wagon under arrest you mean 362
that no wagons have been seized or impounded? A. Yes, sir.

Q. 37. Because the Adams had not procured licenses for them as express wagons? A. I know that to be so.

Mr. Guthrie: That is all.

CROSS-EXAMINATION BY MR. HALE:

x-Q. 38. What, if any, record do you keep of applicants for employment that impress you favorably at the time, but whom you do not then assign to this temporary employment of which you have spoken? A. We do not keep any record; we take the man; we have always got a place for a good 363
man.

x-Q. 39. During the recent strike did you bring any employees of the company from other cities to this City to help out? A. I couldn't answer that.

x-Q. 40. Why not? A. Because I don't know.

x-Q. 41. Would that not be in your department? A. No, sir.

x-Q. 42. Who would have charge of that? A. Well, I guess the general agent will have to answer that question.

Mr. Guthrie: Mr. MacKay?

364 Charles E. Wilson.

The Witness: Yes, sir.

x-Q. 43. As superintendent of the wagon service wouldn't you know anything about it? A. Not where they came from; I called for so many men every night and told where I would like to have them placed and they would be assigned and put in charge there by the man or inspector who mans the wagons.

x-Q. 44. And to whom did you give that call, or to whose office? A. Mr. Fraser took them as a rule; Mr. Zimmerman, I believe, did part of the
365 time.

x-Q. 45. How many varieties of wagons or vehicles does the Adams Express Company use in New York? A. I can run them off: There is a three ton truck, a closed van, cage van, double wagon, single wagon, single market truck, double market truck, cage money wagon, three ton automobiles, two ton, and ton and a half, gas cars those are; two ton, one and a half and one ton electrics; three windlass trucks.

x-Q. 46. Which is the heaviest? A. The windlass.

x-Q. 47. And how much do they weigh? A. Well, I will have to guess on that. I do know that
366 our—let me tell it this way: I know that our single wagons weigh about 1,500, our double wagons thirty-two, our closed vans forty; I would judge that the windlass trucks would weigh about the same, possibly forty-two hundred, but I think I should state Mr. Stansberry could answer that better.

x-Q. 48. About how many of each class of vehicles do you employ in New York? A. May I read them?

x-Q. 49. Yes, if you have any memoranda. A. (Referring) We have 237 doubles, 104 singles and

68 automobiles in regular daily service; there is 19 three ton cars, three two ton, eight one and a half ton, those are gas; there is 13 two ton, 12 one and a half and 13 one ton, that is 38 electric; included in those figures are three windlass trucks, and three closed vans; I think that will answer the question.

Mr. Hale: That is all.

REDIRECT-EXAMINATION BY MR. GUTHRIE:

Rd-Q. 50. The list of wagons that you have given includes the service in Brooklyn, upper New York and Jersey City, does it not? A. Yes, sir. 368

Rd-Q. 51. Everything in the New York department? A. Everything in the New York division.

Rd-Q. 52. To what extent are the wagons stabled in Jersey City?

Mr. Hale: Objected to as irrelevant and immaterial.

A. (Referring to Complainant's Exhibit 21) There is in Jersey City stables, 137 doubles, 69 singles. In 47th Street there is 31 doubles, 14 singles, 26 automobiles. In 56th Street stable, 50 doubles, 21 singles. In 124th Street, 19 doubles. There are 34 automobiles in Brooklyn; total of 409.

Rd-Q. 53. Then do I understand that the Adams 369 Express Company has three stables on Manhattan Island? A. Yes, sir.

Rd-Q. 54. And also a stable in Jersey City? A. Yes, sir.

Rd-Q. 55. You also have a stable or depot in Brooklyn? A. Yes, sir.

Rd-Q. 56. In Furman Street? A. Yes, sir.

Rd-Q. 57. And another at the Bedford depot? A. Yes, sir.

Rd-Q. 58. And you keep 34 automobiles in Brooklyn? A. Yes, sir.

370 Charles E. Wilson.

Rd-Q. 59. But none of your horse wagons are stabled in Brooklyn? A. No, sir.

Rd-Q. 60. They are all stabled either in New York or Jersey City? A. Yes, sir.

Rd-Q. 61. When you said that you took a good man on, what did you mean by that? A. Well, we are never so full but that we will take on a man that we know is experienced and has a good record somewhere else, or that you can see he is above the average, even if he has no experience.

Rd-Q. 62. Does such a man go on the extra list?
371 A. Every one is employed as an extra until he is assigned and promoted to be a regular.

Rd-Q. 63. So that he begins by being put on what you call the extra list? A. Yes, sir.

Rd-Q. 64. And given occasional employment as such? A. Yes, sir.

Rd-Q. 65. And then he is promoted ultimately from that extra list to the permanent employment? A. Yes, sir.

Rd-Q. 66. In testifying that you had wagons of two and three tons, did you mean the carrying capacity? A. Yes, sir.

Rd-Q. 67. You didn't mean the weight of the
372 wagon? A. No, sir.

Rd-Q. 68. You mean the carrying capacity in each instance? A. Yes, sir.

RECROSS-EXAMINATION BY MR. HALE:

Rx-Q. 69. The weight of the wagon has some relation to the weight of the load designed to be carried by it, has it not, in most instances? A. Well, it is inconsistent for an electric car weighing say thirty-five—if I remember just right—something like 3,500, to load 2,000 on; they are different from a horse wagon. They are built for so much, and we are told how much we can put on them, and we try to stay within that limit.

George W. Stansberry. 373

GEORGE W. STANSBERRY, called and sworn as a witness on behalf of complainant, testified as follows:

DIRECT-EXAMINATION BY MR. GUTHRIE:

Q. 1. You will state your name, age, residence and occupation? A. George W. Stansberry; 47 years; 342 West 123rd Street; superintendent of stables and garages for the Adams Express Company.

Q. 2. Will you state how long you have been in the employ of the Adams Express Company? A. 374
27 years.

Q. 3. And where and in what capacity? A. In the western department, Illinois, Wisconsin, Minnesota, for the first 15 years, first 14 years as agent, messenger and acting route agent, clerk. In New York as chief clerk of the superintendent's office, and superintendent of stables and garages.

Q. 4. And how long have you been superintendent of stables and garages for the Adams Express Company? A. Six years.

Q. 5. Are you able to state of your own knowledge whether or not the stables or wagons of the Adams Express Company have during that period ever been inspected by the municipal authorities 375
of the City of New York? A. I have no knowledge of them ever having been inspected.

Q. 6. And are you constantly around at the various stables and garages? A. Almost daily.

Q. 7. And would it be the duty of your subordinates to report such inspection to you? A. Positively.

Q. 8. And you never heard of such inspection having been made? A. At no time.

Q. 9. You are familiar with the general character of the wagons in use by the Adams Express Company in its business? A. I am.

376 George W. Stansberry.

Q. 10. Are you also familiar with the general character and construction of wagons in use in the various department stores of the City, and wholesale and retail grocers, and the wholesale and retail drygoods merchants and other merchants? A. So far as one can become familiar from observation, close observation, yes.

Q. 11. Have you had occasion to make a study of the construction of the wagons of the Adams Express Company? A. I have.

Q. 12. And have you had occasion in the course
377 of your business to compare that construction with the construction of other wagons in the City of New York? A. I have.

Q. 13. And have you constantly done so? A. From time to time.

Q. 14. How do the Adams Express Company wagons compare with the wagons in use by the concerns that I have referred to and other similar concerns in the City of New York? A. Well, they are the same in a general way, differing only in many cases in the matter of the form and shap of the body, and according to the character of the load to be hauled, and in the advertising features
378 that the particular company wants to give to their business; but in the general way their construction is similar.

Q. 15. Take the case of the single wagons in use by the Adams Express Company in the City of New York: How do they compare in size and character and general construction with the single wagons, delivery wagons, of the department stores, grocers and drygoods merchants and other people engaged in using the streets in the City? A. The single wagons compare along general lines, the same as those employed by the concerns you mention, and in the construction of the running part of the

wagon, the carrying capacity, the space occupied upon the street or elsewhere, is very much the same.

Q. 16. Now take the double wagons of the Adams Express Company, which I take it are the two-horse wagons, which are called doubles in your business: How do they compare with the two-horse wagons in use by department stores or grocers, wholesale or retail, or other wholesale or retail merchants in the City of New York? A. Well, the same is true of the comparison there; whatever difference there is is more in the construction of the body, the carrying bed or platform or whatever it may be on 380
the wagon, the running gear is very similar; also the space occupied on the streets, for two-horse wagons. If anything at all the two-horse wagons of wholesale grocers and wholesale and retail dry-goods concerns have a greater carrying capacity than we have, both loading and carrying.

Q. 17. Are they, therefore, heavier than the doubles of the Adams? A. They would be.

Q. 18. Well, taking the automobiles, gasoline and electric, in use by the Adams Express Company: How do they compare in size and weight with automobiles used by department stores, such as Gimbel Brothers, and other merchants in the 381
City of New York? A. Well, those of the large New York merchants, department stores, manufacturing and wholesale concerns, use practically the same automobile equipment that we do; they are made by the same concerns, and have identically the same chassis or running part that we have.

Q. 19. And are they substantially the same weight? A. Very much the same.

Mr. Hale: Objected to as leading.

Q. 20. From whom do you buy your automobiles? A. Well, there are several concerns; we buy from

382 George W. Stansberry.

the Packard Motor Car Company, the General Vehicle Company, the Autocar Company and the Lansdowne Company.

Q. 21. And to your knowledge have these several companies a number of similar wagons in use in the City of New York? A. Yes, they have.

Mr. Hale: The testimony of this witness as to the comparison of the various classes of vehicles is objected to as being a mere statement of opinion and not a fact, and motion is made to strike it out; and it is also objected to as irrelevant and immaterial.

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Q. 22. Have you personally made a comparison of the single wagons in use by the Adams Express Company with other single or one-horse wagons in use by the concerns that you have referred to? A. I have.

Q. 23. Have you made a personal examination and comparison of the two-horse or double wagons in use in the Adams Express Company business with the two-horse or double wagons in use in the concerns to which you have testified to? A. I have.

Q. 24. Have you personally made an examination and comparison of the automobiles in use by the Adams Express Company and the automobiles

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in use by other business concerns in the City of New York? A. I have.

Q. 25. And has your testimony given preceding these few questions been based upon that personal examination and investigation on your part? A. It has.

Mr. Hale: The objection is renewed.

Q. 26. Have you observed the use of the streets of the City of New York by vehicles substantially similar in construction to the vehicles of the Adams Express Company? A. I have.

Q. 27. And what can you say in regard to the

manner or comparative manner in which such wagons use the streets? 385

Mr. Hale: Objected to as irrelevant and immaterial and as calling for the mere opinion and conclusion of the witness.

A. I have observed the use of the streets by different classes of wagons, our own and other wagons, and find that in the nature of their service they are very much the same.

Q. 28. In regard to the speed of our wagons, how does that compare with the speed of other similar wagons used by other concerns in the City? 386

Mr. Hale: The same objection.

A. That depends entirely upon the time and circumstances under which they are used. Any one of our wagons will load at the depot with 60 or 70 deliveries, spend the morning in distributing them around in a small area of territory, possibly three or four blocks, four or five, and they go very slowly while that work is being done. The same is true when they start over the same territory to pick up freight to go outside of the City in interstate commerce, and when they finish that work and start to the depot or to make the ferryboats they sometimes drive fairly fast, but outside of that their speed is slower than the average vehicle. 387

Q. 29. Have you had occasion frequently to investigate and observe as to this use of the streets by the Adams Express Company? A. Daily.

Q. 30. And in comparison with the wagons of other concerns? A. Yes.

Q. 31. How do the wagons of the Adams Express Company and the other express companies in the City of New York compare in number or quantity with the other similar wagons—I mean similar

388 George W. Stansberry.

in general construction, one and two horses and automobiles—in use throughout the City?

Mr. Hale: Objected to as irrelevant and immaterial, and as calling for the opinion and conclusion of the witness; the question is also objected to as to form.

A. I should say that the express companies bear a proportion of possibly one to twenty of other kinds of the same general size and of the same carrying capacity and so forth.

Q. 32. Are the express wagons any greater interference with traffic than other similar wagons as
389 to which you have testified?

Mr. Hale: Objected to as incompetent, irrelevant and immaterial, and as calling for the opinion of the witness.

A. I should say not.

Q. 33. So far as you know do the express wagons require any special care from the police in charge of the traffic as distinguished from the care of the police of other similar wagons?

Mr. Hale: The same objection repeated.

A. They do not.

Q. 34. And are they, I mean the express wagons, any greater menace to pedestrians in the
390 City of New York than other similar wagons owned by the department stores and wholesale and retail merchants that you have referred to?

Mr. Hale: Same objection.

A. I would say no.

Q. 35. Mr. Stansberry, did you have knowledge during the recent strike of the arrest by the police of several of the drivers of the Adams Express Company? A. I was so informed.

Q. 36. And was that matter brought to your attention as superintendent of the stables in the

course of your duty as such? A. It was, as far as the wagons are concerned.

Q. 37. Do you recall that several wagons of the Adams Express Company were seized and impounded by the police of the City during that strike?

Mr. Hale: Objected to as incompetent, irrelevant and immaterial, as shown to be hearsay, and upon the ground that the City authorities were acting in the due and orderly execution of the laws.

A. I do.

Q. 38. Do you recall the numbers of those 392
wagons? A. I can't recall them just at the present time.

Q. 39. Do you remember whether No. 388 was one of the wagons? (Handing paper to witness.)

Mr. Hale: I have no objection to your refreshing his memory if it will do any good.

A. Those are the wagons, to the best of my recollection.

Q. 40. That is, to the best of your recollection, double wagons numbers 388, 413 and 494 were the wagons which were seized and impounded by the police? A. Yes.

Q. 41. What did you do in regard or in connec- 393
tion with this seizure or impounding? A. When we were notified that the wagons had been seized an effort was made to get our wagons out.

Q. 42. Well, just state what you personally did as superintendent of stables? A. That matter was not in my hands at the time, it was taken care of by the general agent's office.

Q. 43. Then you didn't give any personal instructions in regard to that? A. No.

CROSS-EXAMINATION BY MR. HALE:

x-Q. 44. Is a certain territory assigned to particular wagons or how are they employed in the con-

394 George W. Stansberry.

duct of your business? A. New York City is divided into districts and certain drivers with certain wagons are assigned to that territory.

x-Q. 45. You mean a number of wagons or drivers will be assigned to a single district? A. Yes, sir, that is right.

x-Q. 46. And then how do they cover the district? A. Well, each one has his special territory to which he takes deliveries in the morning, or whatever time he goes out on the streets, and picks up afterwards.

395 x-Q. 47. Each wagon has then what might be termed a sub-district or route to patrol? A. That is right. That is what they call route wagons.

x-Q. 48. And how are the other wagons used? A. Well, we have wagons that are called schedule wagons, which haul freight between offices and depots; they take the freight that has been picked up by the route wagons and move it to such points necessary to get it away from the city.

x-Q. 49. What is the smallest territory or route covered by a single wagon? A. You mean by one wagon or one-horse wagon?

x-Q. 50. By any one wagon of your company? A. Well, I am not prepared to say.

396 x-Q. 51. I mean in distance or territorial extent? A. We have some wagons that only take in two or three blocks, or just a very small territory.

x-Q. 52. And from that it varies up to how much? A. Well, in the upper part of the city to sometimes a territory that will occupy a square mile; that is in the Harlem or Bronx district.

x-Q. 53. How would it be in the more or less congested business districts? A. Very small, always.

x-Q. 54. How many wagons of the Adams Express Company altogether were impounded accord-

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ing to the information concerning which you have testified in chief? A. That is a matter that I ought not to be asked about; I only know that from hearsay—three wagons.

x-Q. 55. On what days were those wagons taken up? A. I can't give you that information.

x-Q. 56. Well, were they all about the same time? A. Within a short period, very close to each other. To the best of my recollection they were all taken on the same day, November 9th, 1910.

Mr. Hale: That is all.

REDIRECT-EXAMINATION BY MR. GUTHRIE: 398

Rd-Q. 57. Mr. Stansberry, when you speak of a wagon picking up, do you mean that it collects freight? A. I do.

Rd-Q. 58. For shipment over the Adams Express Company? A. That is the meaning.

Rd-Q. 59. So that drivers may go out in the morning or the afternoon with a load of packages to deliver and then make collections in the same district before returning to the office? A. That is the custom.

Rd-Q. 60. And have you personal knowledge of the custom in regard to deliveries and collections on such a thoroughfare as Broadway or Fifth Avenue? 399 A. Only that we undertake to avoid crossing those streets by laying out our district contiguous to Fifth Avenue and Broadway so that a driver in a certain district don't have to cross the streets in order to make his delivery or pick-up.

Rd-Q. 61. Is it in order not to interfere any more than is necessary with traffic? A. For that purpose and for our own safety and convenience.

Rd-Q. 62. So that, for example, on Fifth Avenue, will a wagon be confined we will say to the right-hand side going up Fifth Avenue? A. Well, if his district lies east of Fifth Avenue he will be

400 Charles E. Wilson.

on that side of that street; he won't have to pass over to the west side in order to make either his delivery of freight or a collection.

Rd-Q. 63. And does the same thing apply to Broadway? A. It does, below 59th Street.

Rd-Q. 64. Below 59th Street? A. Yes, sir.

Rd-Q. 65. And is that same practice observed in other congested districts? A. So far as may be practicable.

G. W. STANSBERRY.

Sworn by me,
JOHN A. SHIELDS,
401 Examiner.

CHARLES E. WILSON, recalled:

DIRECT-EXAMINATION BY MR. GUTHRIE:

Q. 1. You have referred in your testimony to the applicants who come to the office of the Adams Express Company seeking positions as drivers and helpers, and you have stated that you make an examination and reject some and have others fill in blank applications. Taking the last four or five years, will you please state what has been the general experience as to the percentage of men applying for positions of driver or helper in the
402 City of New York to those that you find competent or capable to act in those positions? A. Well, we do not take on more than a third of what do apply—about three in ten, something like that.

Q. 2. You think that three in ten is about a fair average? A. Yes, sir.

Q. 3. Of the applicants who apply to you for the position of helper or driver? A. Yes, sir.

Mr. Guthrie: That is all.

C. E. WILSON.

Sworn by me,
JOHN A. SHIELDS,
Examiner.

CAM F. RAIFORD, called and sworn as a witness on behalf of complainant, testified as follows:

DIRECT-EXAMINATION BY MR. GUTHRIE:

Q. 1. What is your name, age, residence and occupation? A. Cam F. Raiford; 44; 288 Clinton Street, Brooklyn; assistant general agent of the Adams Express Company.

Q. 2. How long have you been in the employ of the Adams Express Company? A. 20 years.

Q. 3. How long have you been in the express business? A. 32 years.

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Q. 4. Where were you employed before you were employed with the Adams Express Company? A. Wells, Fargo & Company, and the Texas Company in Texas.

Q. 5. Have you in the performance of your duties as assistant general agent had occasion to investigate as to the number of wagons using the streets of the City of New York? A. Yes, sir.

Q. 6. Are you familiar with the wagons of the Adams Express Company? A. Yes, sir.

Q. 7. And have been for many years? A. Yes, sir.

Q. 8. Have you personally examined and investigated as to the construction and general character of wagons in use by the department stores, wholesale and retail grocers and wholesale and retail merchants in the City of New York? A. I have not figured on it in the way of the actual building of the wagon, only from observation.

405

Q. 9. But you have made comparison from observing the wagons in use on the streets of the City of New York? A. Yes, sir.

Q. 10. How do these wagons in use in the streets of the City of New York and belonging to department stores and wholesale and retail merchants compare in appearance, size and width and height

with the wagons of the Adams Express Company? A. With some of the concerns they are practically the same; with others they are much smaller; the singles are pretty much the same all over as any single that is used by any concern; but take coal concerns and wholesale grocers and other people, why, our wagons are smaller than theirs.

Q. 11. Are our wagons smaller than the wholesale grocers? A. Yes, sir; in many cases.

Q. 12. And the wholesale dry goods merchants? A. Yes, sir.

407 Q. 13. Have you made an investigation to determine the comparative number of wagons similar to those of the Adams Express Company using the streets of the City for the transportation of merchandise? A. Yes, sir.

Q. 14. What is approximately the comparison?

Mr. Hale: Objected to as calling for the conclusion of the witness involved by the use of the word "similar."

A. About one in 20, I should say, would be the express company's percentage.

Q. 15. And how long have you been engaged in making this investigation? A. Well, practically, ever since our wagons were taken to the pound.

408 Q. 16. Well, practically since the strike? A. Since the strike, yes, sir.

Q. 17. And have you also had a number of men under you making investigation of these facts? A. For the past three weeks.

Mr. Guthrie: That is all.

CROSS-EXAMINATION BY MR. HALE:

x-Q. 18. When you say that your wagons are smaller than those of wholesale grocers, you mean that some of your wagons are smaller than some of the wholesale grocers? A. Yes, sir.

x-Q. 19. Not smaller than all of them? A. But

the percentage of theirs is greater than ours, that is heavier.

x-Q. 20. And that was the single or double horse wagons? A. Double horse.

x-Q. 21. Of wholesale grocers? A. Their single wagons will compare with what we call our single market trucks; they are practically one and the same thing.

x-Q. 22. Now, what is the case as to the department store wagons? A. The singles are pretty much the same thing.

REDIRECT-EXAMINATION BY MR. GUTHRIE: 410

Rd-Q. 23. The same as ours? The same as the Adams? A. The same as the Adams.

C. F. RAIFORD.

Sworn by me,
JOHN A. SHIELDS,
Examiner.

ROBERT W. ZIMMERMAN, called and sworn as a witness on behalf of complainant, testified as follows:

DIRECT-EXAMINATION BY MR. GUTHRIE:

Q. 1. You will state your name, age, residence and occupation? A. Robert W. Zimmerman; 31; 176 West 81st Street, New York; assistant general agent, Adams Express Company. 411

Q. 2. How long have you been in the employ of the Adams Express Company? A. Five and a half years.

Q. 3. What are your duties generally as assistant general agent? A. I look after—that is, they come under me, the different bureaus, accounting, correspondence, expense, surety, collection.

Q. 4. Does the Adams Expres Company keep an investigation or surety bureau? A. Yes, sir.

412 Robert W. Zimmerman.

Q. 5. And have you heard the testimony of the witness Wilson? A. Yes, sir.

Q. 6. And what is done when an application such as Exhibit No. 22 is sent to the surety bureau? A. The application, on the face of it, contains the names of the former employers of the applicant, and we send a representative who makes a personal call on the last two employers; this representative also calls at the house or the given address of the applicant in order to see whether it is true or not and see what his home surroundings are, interview
413 the members of his family, learn what we can about him; the rest of the investigation is carried on by correspondence; we correspond with each and every one of the names given on the application the man states he has worked for, and on the other side of that sheet there is a space showing—a space for five or six names that the man must give of people who will testify as to his character—not whom he has worked for—but as to his character, and what they know about him; we correspond with them.

Q. 7. If the references are satisfactory what is then done? A. Nothing is done; the man is allowed to continue to work.

414 Q. 8. And if the references are not satisfactory, what is then done? A. He is rejected.

Q. 9. Well, who is notified? Mr. Wilson, in charge of the place? A. If we are only speaking of the wagon service, yes, sir.

Q. 10. What other service? A. All our clerks.

Q. 11. They all pass through this system of investigation? A. Every employee, yes, sir.

Q. 12. Could you give us an idea of the extent to which applications have to be rejected? A. Yes, sir.

Q. 13. About how many applications a month do you have in ordinary times? A. We have around 200, some months more.

Q. 14. And what is the average result of the applications? A. A large number of these 200 or more drop out because we are investigating them; when they come they don't know that they are going to be investigated, and many times they give a false showing of their former employment; as soon as we discover that, we will, in the case of the wagon service men, send a letter to Mr. Wilson saying that we have discovered this and that about the man that doesn't show on his application, and ask him how he explains it, and in most cases where we show up something like that on the man, he disappears; that is we hear no more of him; Mr. Wilson will reply later that the man has not been to work since. 416

Q. 15. But without going into particulars, of the 200 applications which you say you receive in a month, how many will have to be rejected? Can you approximate it? A. I have some figures, if you want me to look at them.

Q. 16. Give us about the number? A. I have forgotten what they are; I will look these up; take a month—the month of September, 300 applied— 299 applied—on January 1st there were only 102 of these in the service left, that were still here; November, we had 250 apply for service, 100 of these remain. 417

Q. 17. That is, 150 were rejected? A. Yes, sir.

Q. 18. Out of 250, is that about the average? Do you recollect whether that is about the average, month by month? A. Yes, sir; that would be about the average.

Mr. Guthrie: That is all.

418 James Stephen Noble.

Mr. Hale: The entire deposition of this witness is objected to as irrelevant and immaterial.

Cross-examination waived.

R. W. ZIMMERMAN.

Sworn by me,
JOHN A. SHIELDS,
Examiner.

Adjourned to Friday, January 27th, 1911, at 2.30 o'clock P. M.

NEW YORK, JANUARY 27th, 1911,
419 2.30 P. M.

Met pursuant to adjournment.

Present: Counsel as before.

JAMES STEPHEN NOBLE, called and sworn as a witness on behalf of complainant, testified as follows:

DIRECT-EXAMINATION BY MR. GUTHRIE:

Q. 1. You will state your name, age, residence and occupation? A. James Stephen Noble; 34; agent, Adams Express Company; residence, 225 East 53rd Street.

Q. 2. How long have you been employed by the
420 Adams Express Company? A. 14 years.

Q. 3. In what capacities? A. Well, from waybill clerk up to my present position as agent.

Q. 4. What, briefly, are your duties as agent? A. Taking charge of the eastern depot.

Q. 5. What depot is that, 48th Street? A. 48th Street and Madison Avenue. All the freight that comes from the eastern points is all handled there.

Q. 6. That is, the freight coming over the New York, New Haven & Hartford Railroad Company? A. New York, New Haven & Hartford; yes, sir.

Q. 7. And also the freight going over the New

York, New Haven & Hartford Railroad to points east? A. Yes, sir.

Q. 8. What, if anything, do you know in regard to the seizure or impounding of wagons of the Adams Express Company in November, 1910? A. Why, I was notified by the police that they had two of our wagons there at the station house.

Q. 9. When was this? A. On the night of November 9th.

Q. 10. You were notified by the police that they had two of your wagons? A. Two of our wagons; yes, sir, with the freight on.

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Q. 11. With the freight on? A. The freight was in the station house at the time they told me.

Q. 12. What were the numbers of the wagons? A. 388 and 494.

Q. 13. State what you did? A. Why, I went over to the station house.

Q. 14. What station house? A. 51st Street station house, and looked at the freight there to see what it consisted of; brought one of my men from the terminal and left him in charge of the goods all night.

Q. 15. Do you know anything about that freight, that particular freight; had you had anything to do with its loading? A. Why, one wagon in particular I had loaded five crates of hats on for the Panama Railroad from Danbury.

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Q. 16. What was the number of that wagon? A. 494.

Q. 17. And that freight had come to New York from where? A. From Danbury, over the New Haven Railroad.

Q. 18. Danbury, Connecticut? A. Danbury, Connecticut.

Q. 19. State whether you went to the police station, and if so what you did? A. Why, I asked the

424 James Stephen Noble.

lieutenant in charge of the 51st Street police station house what became of the wagons, and he said they had been sent to the corporation yard in 56th Street.

Q. 20. Did he say by whom they had been sent? A. No, I didn't ask him that.

Q. 21. Did you find any freight at the station house, and, if so, what freight? A. Yes, I found these five crates of hats which I had loaded on this driver Albert's wagon earlier in the day.

Q. 22. 388? A. 388—I don't remember just the
425 exact number he had.

Q. 23. Well, it was one of the wagons? A. One of the two wagons; I don't know just which one he was driving, and there was also some other freight there which came from our Brooklyn office destined to points east on the New Haven Railroad.

Q. 24. And what did you do with that? A. Why, I placed a guard over it until the following morning, when I relieved him with another man from the depot, and we did that until we recovered the goods.

Q. 25. And ultimately what did you do with the goods? A. On Friday night I called up Captain O'Connor, and asked if I could obtain the goods
426 from there, and he said yes, if I would send a wagon over after them; that was Friday after the day they were seized,—and I sent a wagon over that Friday night and obtained the goods.

Q. 26. And brought them back to 48th Street? A. Yes, sir.

CROSS-EXAMINATION BY MR. HALE:

x-Q. 27. Do I understand you obtained the goods the day following the day they were taken to the station house? A. No, three days later.

x-Q. 28. Three days later. In the meantime had you applied for them? A. I had asked Captain O'Connor for them but he said he would hold them

there pending some order; that is the way he expressed himself.

x-Q. 29. And what else did you do then? A. Why, I simply kept them protected by our employees until such time as the police gave them up to me.

x-Q. 30. Did you make any effort to obtain any order of the sort for the goods? A. No, I did not. I may add that the horses attached to these two wagons were sent to Doyle's livery stable by the police after they had transferred the freight to the precinct station house. 428

J. S. NOBLE.

Sworn by me,

JOHN A. SHIELDS,

Examiner.

IT IS STIPULATED and agreed between the parties, for the purposes of this suit, but subject to correction before final hearing, that the by-laws and ordinances of the Mayor, Aldermen and Commonalty of the City of New York were revised in 1838 and 1839, and published by authority of the Common Council in 1839.

That the ordinances were again revised in 1856 and published by order of the Common Council in 429 the edition known as "Kent's Edition," and that such edition of 1856 contains the first provision in the ordinances providing for the licensing or regulation of express wagons or express drivers.

That the ordinances were revised in 1881 and as so revised published by authority in the edition edited by Shepard and Shafer.

That the ordinances were revised in 1897 and published by authority in the edition edited by Percy and Collins.

That the license ordinances were revised in 1899, and as so revised appear in the printed work en-

titled, Ordinances, Resolutions, etc., passed by the Municipal Assembly of the City of New York and Approved by the Mayor, published in two volumes and printed by the Martin B. Brown Co., dated 1899, which publication shall be deemed in evidence without being filed herein as an exhibit and either party may refer thereto.

And that there has been an annual revision of the ordinances of the City of New York, from 1901 to 1910.

IT IS FURTHER STIPULATED and agreed, for the purposes of this suit, that any of the parties hereto may refer on any hearing or appeal in this suit to any of the ordinances published in these several revisions as fully and to all intents and purposes as if the ordinances had been set out at length in the case, subject, however, to objection upon the ground of relevancy or materiality by either party.

It is also agreed that either party may refer to the Revised Ordinances of 1894 as edited by Laird.

IT IS FURTHER STIPULATED and agreed by and between the parties, for the purposes of this suit, that the ordinances of the City of Brooklyn were revised in 1857 and then published by authority of the Common Council of that city in an edition edited by Henry C. Murphy; that the ordinances of the City of Brooklyn were again from time to time from 1857 to 1873 revised and published by authority of the Common Council in the edition edited by W. G. Bishop, and that the ordinances of said City of Brooklyn were again revised in 1888 and 1889 and published by authority of the Common Council in the edition edited by Shanley and McTierney.

The same stipulation as that in respect of the revisions of the ordinances of the City of New York was thereupon entered into between the parties.

COMPLAINANT'S CASE CLOSED JANUARY 27, 1911.

DEFENDANTS' CASE.

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IT IS FURTHER STIPULATED AND AGREED by and between the parties hereto, for the purposes of this cause only, that the wagon of the Adams Express Company seized on November 9th, 1910, at Canal Street and West Broadway for a violation of the ordinances of the City of New York, in that it was being used and operated as an express wagon without a license, which wagon was placed in the Corporation Yards at the foot of Rivington Street, East River, has been delivered to the Adams Express Company upon its demand since the institution of this suit.

That neither the Mayor nor the Police Commissioner of the City of New York directed or ordered that any express wagons should be held until called for by a driver of the Adams Express Company duly licensed to act as such, or until such wagon was duly licensed.

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That the Police Commissioner of the City of New York, upon the seizure of the express wagons which were being used and operated as express wagons without licenses, directed that said wagons should be delivered up to the Adams Express Company, or its duly authorized agent, upon demand and upon payment of the proper charges, but said Adams Express Company was not notified of such direction until after the commencement of this suit.

435

That defendant William J. Gaynor, Mayor of the City of New York, and defendant James C. Cropsey, Police Commissioner of the City of New York, shall each be deemed to have been called as a witness on the part of the defendants herein and to have each testified that defendants do not claim the right to seize unlicensed wagons and hold the same until a license has been obtained therefor and until removed by a licensed driver of the express company, and that they have never claimed such

436 right and have no intention of claiming or attempting to enforce any such alleged right, but that on the contrary defendants intend to and will deliver to the owner thereof, on demand, any and all express wagons removed from the streets of the city upon the arrest of their drivers for violation of said ordinances in respect to licenses, and that it is merely the use of express wagons in the express business within the city in violation of said ordinances that defendants intend to prevent.

DEFENDANTS' CASE CLOSED MARCH 10, 1911.

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COMPLAINANT'S EXHIBITS. 439

Complainant's Exhibit No. 1, January 11, 1911, J. A. S., Exr.

THE ADAMS EXPRESS COMPANY.

MILEAGE DECEMBER 31, 1910.

Name of Road.	*Miles.*	
Steam Roads.		
Ashland & Western Railway	25	
Baltimore, Chesapeake & Atlantic Railway	87	
Bellefonte Central Railroad	23	
Big Stone Gap & Powell's Valley	6	
Boyne City, Gaylord & Alpena Railroad	27	
Brooksville Railroad	10	
Central New England Railway	187	
Chesapeake & Ohio Railway	1,622	440
Chesapeake & Ohio, of Indiana	285	
Chesapeake & Western Railway	43	
Chesapeake Beach Railway	34	
Chicago, Burlington & Quincy Railroad	8,999	
Coal & Coke Railway	183	
Coal River Railway	51	
Cincinnati, Flemingsburg & Southeastern Railroad	17	
Colorado & Southern Lines:		
Colorado & Southern Ry. Co.	1,117	
Colorado Springs & Cripple Creek District Ry.	50	
Fort Worth & Denver City Railway	454	
Wichita Valley Railway	257	
Columbus & Southern Railway	23	
Cornwall & Lebanon Railroad	22	
Cumberland Valley Railroad	162	
Denver, Laramie & Northwestern Railway	56	
Denver, Northwestern & Pacific Railway	214	
Dry Fork Railroad	37	441
East Berlin Railway	8	
East Broad Top Railroad & Coal Company	37	
Eastern Kentucky Railway	36	
Emmitsburg Railroad	15	
Frankfort & Cincinnati (Now Louisville & Nash. R. R.)	40	
Frederick R. R. (Formerly Wash., Frederick & Gettysb.)	17	
George's Creek & Cumberland	18	
Glasgow Railroad	10	
Grafton & Upton Railroad	16	
Great Western Railway	48	
Huntingdon & Broad Top Mountain Railroad	53	
Interstate Railroad	6	
Iowa Central Railway	583	
Island Creek Railroad	6	
Kanawha & West Virginia Railroad Company	35	
Kishacoquillas Valley Railroad	9	
Lancaster, Oxford & Southern Railroad	30	
Lexington & Eastern Railway	93	

	Name of Road.	Miles.
	Steam Roads.	
	Ligonier Valley Railroad	10
	Little Kanawha Railroad	29
	Louisville & Nashville Railroad	1,950
	Louisville, Henderson & St. Louis Railway	183
	Manistee & Grand Rapids R. R.	61
	Maryland & Pennsylvania Railroad	77
	Maryland, Delaware & Virginia Railway	85
	Minneapolis & St. Louis Railroad	1,028
	Monongahela Railroad	49
	Muscatine North & South	28
	Missouri & Illinois Brdge. & Belt Railroad	3
	Nelson & Albemarle Railway	6
	Newport & Sherman's Valley Railroad	29
	New Park & Fawn Grove	9
	Narragansett Pier Railroad	8
	New York, Ontario & Western Railway	521
	Newport & Wickford Railroad (Now N. Y. N. H. & H. R. R.)	3
443	New York, New Haven & Hartford R. R.	2,187
	New York, Philadelphia & Norfolk Railroad	120
	Northern Central Railway	470
	Ohio & Kentucky Railway	27
	Ohio River & Western Railway	112
	Pennsylvania Lines—East:	
	Pennsylvania Railroad	3,507
	Pennsylvania Company (Erie & Pittsburgh)	162
	Barnegat Railroad	8
	Pennsylvania Lines—West:	
	Pennsylvania Company	1,175
	P. C. C. & St. L.	1,363
	Grand Rapids & Indiana	582
	Vandalia Railroad	806
	Cincinnati & Muskingum Valley	148
	Cincinnati, Lebanon & Northern	44
	Cleveland, Akron & Columbus	178
	Waynesburg & Washington	28
	Philadelphia, Baltimore & Washington Railroad	698
444	Peoria & Pekin Union Railway	8
	Piney River & Paint Creek	10
	Pittsburgh, Lisbon & Western Railroad	25
	Pittsburgh, Shawmut & Northern Railroad	12
	Pittsburgh, Summerville & Clarion Railroad	15
	Pittsburgh, Westmoreland & Somerset Railroad	27
	Quincy, Omaha & Kansas City Railroad	250
	Richmond, Fredericksburg & Potomac Railroad	116
	Rockport, Langdon & Northern Railway	6
	Sharpsville Railroad	17
	South Manchester Railroad	2
	Stewartstown Railroad	7
	Susquehanna River & Western Railroad	13
	Susquehanna, Bloomsburg & Berwick Railroad	39
	Tabor & Northern Railway	8
	Tionesta Valley	34
	Toledo, Peoria & Western Railway	248
	Tuckerton Railroad	29

Name of Road.	*Miles.*	445
Steam Roads.		
Union Transportation Company	25	
Susquehanna & New York Railroad	58	
Virginia Air Line	30	
Virginia Anthracite Coal & Coke Company	9	
Virginian Railway	460	
West Jersey & Seashore Railroad	58	
do. do.	166	
White Oak Railroad	9	
Western Maryland Railway	529	
Washington, Potomac & Chesapeake Railroad	20	
Winfield Railroad	12	
Worthville Railroad	8	
Total Steam Roads	32,994	

Complainant's Exhibit No. 2, January 11, 1911, J. A. S., Exr.

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Name of Carrier.	*Miles.*	
Electric Lines.		
Conway Street Electric Railway (Mass.)	5	
Lackawanna & Wyoming Valley Railroad (Penna.)	17	
Meadville & Conneaut Lake Traction Company	14	
New Paltz, Highland & Poughkeepsie (New York)	4	
Milford & Uxbridge Street Railway (Mass.)	5	
Oregon Interurban (Missouri)	3	
Parkersburg, Marietta & Interurban (Ohio & W. Va.)	12	
Rhode Island Suburban Railroad	16	
Shelby County Railway (Missouri)	8	
Washington, Baltimore & Annapolis Elec. Ry	58	
West Jersey & Seashore Railroad	58	
do. do.	.34	
Wheeling Traction Company	11	
Total Electric Lines	245	447

Steamboat Lines.	*Miles.*
Baltimore, Chesapeake & Atlantic Ry. Boat	44
Baltimore, Chesapeake & Atlantic Steamer Lines	997
Baltimore Steam Packet Company	180
Chesapeake & Ohio Railroad Boat	15
Goodrich Transit Company	85
Island Transportation Company	8
Maryland, Delaware & Virginia Ry. Boat	27
Maryland, Delaware & Virginia Steamer Lines	700
New York, Philadelphia & Norfolk Railroad Boat	36
New York, New Haven & Hartford R. R. Boat:	
Harlem River to Jersey City	13
New England Navigation Company	666
New London-Block Island Line	29
Newport-Block Island Line	27
New Bedford, Martha's Vineyard & Nantucket Steamboat Co.	53
Newport & Wickford Steamer Line	19

448	Old Dominion Steamship Company	164
	Philadelphia, Baltimore & Washington R. R. Boat	7
	Tolchester Beach Improvement Company	116
	Virginia Navigation Company	120
	Watch Hill Steamboat Company	5
	Total Steamboat Lines	3,304

Complainant's Exhibit No. 3, January 11, 1911, J. A. S, Exr.

Name of Carrier.	*Stage and Wagon Lines.*	*Miles.*
J. S. B. Cochran	Bartow & City Island, New York	3
McCrillis' Express	Boston to Boston Highlands	2
Brewer's express	Boston to Charlestown, Mass	2
Magee's Express	East Boston, Mass	2
449 Dillingham's Express	Jamaica Plains, Mass	5
Parker's Express	Roslindale, Mass	6
Wagon	Brookline, Mass	7
Wagon	Cambridge, Mass	4
Wagon	Holyoke to Springfield, Mass	9
E. T. Curtis	Lenox to Lenox Village, Mass	3
Stage	Eminence to New Castle, Ky	4
Wagon	Lyons to Clinton, Ia	6
J. M. Beck	Sparta to Owenton, Ky	4
Griffith Brothers	Preston to Owingsville, Ky	5
Wagon	Sanders, Ghent & Vevay	11
	Total Stage and Wagon Lines	73

Complainant's Exhibit No. 4, January 11, 1911, J. A. S, Exr.

ADAMS EXPRESS COMPANY.

450 MILEAGE BY STATES AND TERRITORIES.

DECEMBER 31, 1910.

State	*Steam Roads*	*Electric*	*Steamboat*	*Stage*	*Total*
Colorado	1679	....	....	....	1679
Connecticut	1006	....	....	....	1006
Delaware	267	....	....	....	267
Dist. of Col.	5	4	....	....	9
Georgia	216	....	....	....	216
Illinois	2628	....	....	....	2628
Indiana	1733	....	....	....	1733
Iowa	2339	....	....	6	2345
Kansas	260	....	....	....	260
Kentucky	1983	....	....	24	2007
Massachusetts	1008	10	53	40	1111
Maryland	931	54	160	....	1145
Michigan	527	....	8	....	535

Minnesota	426	....	....	....	426	451
Missouri	1390	11	....	....	1401	
Montana	193	....	....	....	193	
Nebraska	2840	....	....	....	2840	
New Jersey	704	92	....	....	796	
New Mexico	81	....	....	....	81	
New York	1065	4	....	3	1072	
North Carolina	12	....	....	....	12	
Ohio	2024	12	....	....	2036	
Pennsylvania	4429	31	....	....	4460	
Rhode Island	207	16	39	....	262	
South Dakota	514	....	....	....	514	
Tennessee	345	....	....	....	345	
Texas	711	....	....	....	711	
Virginia	1342	....	342	....	1684	
West Virginia	1305	11	....	....	1316	
Wisconsin	223	....	....	....	223	
Wyoming	601	....	....	....	601	
Not assignable to States	....	....	2702	....	2702	
Total	32994	245	3304	73	36616	452

Complainant's Exhibit No. 5, January 11, 1911, J. A. S., Exr.

NUMBER OF EMPLOYEES—DECEMBER, 1909.

Classification	*Entire Company*	*In New York Department*	
Agents	5,952	48	
Clerks	3,307	748	
Drivers	2,720	423	
Helpers	1,348	466	
Stablemen	404	150	
Porters	1,506	191	
Transfermen	459		
Messengers	1,639		453
Superintendents & R. Agts.	72		
Department Cashiers, Auditors and clerks	559		
Supply Department	27		
Engineers Bureau	6		
Money Order Department	29		
Treasurer's, Secretary's and General Auditor's Offices	10		
Total	18,038	2,026	

454 **Complainant's Exhibit No. 6, January 11, 1911, J. A. S., Exr.**

The Company's charge is based upon the value of the property, which must be declared by the shipper.

ADAMS EXPRESS COMPANY

(Non-negotiable Bill of Lading.)

61 Broadway, NEW YORK, ... 19

RECEIVED FROM .....

Valued at $.....

MARKED .....

455 Which the Company agrees to carry upon the following terms and conditions, to which the shipper agrees, and as evidence thereof, accepts this bill of lading.

1. In consideration of the rate charged for carrying said property which is regulated by the value thereof and is based upon a valuation of not exceeding fifty dollars for any shipment of 100 pounds or less, and not exceeding fifty cents per pound for any shipment in excess of 100 pounds, unless a greater value is declared at time of shipment, the shipper agrees that the Company shall not be liable in any event for more than fifty dollars ($50), on any shipment of 100 pounds or less, and for not
456 exceeding fifty cents per pound on a shipment weighing more than 100 pounds, and said property is valued at, and the liability of the Company is hereby limited to, the values above stated, unless a greater value is declared at the time of shipment, and charge for value paid or agreed to be paid therefor; and in case of partial loss or damage the Company shall not be liable for more than such proportion of the same as $50, if 100 pounds or less in weight, or fifty cents per pound if weight exceeds 100 pounds, or the value declared, bears to the actual value if greater.

2. If the Express Company has not an agency 457
at the point of destination, it shall carry the property to its agency nearest or most convenient thereto, and there notify the consignee, or deliver the property to some other carrier to continue the transportation. The Adams Express Company shall not be liable for loss or damage occurring after such delivery, nor for detention after having tendered the property to a connecting carrier.

3. The Express Company shall not be required to make free delivery at points where it maintains no free delivery service, nor at any point beyond its established delivery limits.

4. The Express Company, unless negligent, shall 458
not be liable for loss, damage or detention of said property caused by civil or military authority, piracy, insurrection, strikes or riot, or by the act of any person acting as an officer of the law, whether with or without lawful process, warrant or authority, or by the dangers of railroad transportation, the perils of navigation, changes of temperature, heat, cold, wet or decay, nor for the death, injury or escape of live freight, the Company not being a carrier thereof except at owner's risk.

5. Said property is accepted as merchandise only, and the Express Company shall not be liable in any event for the loss of money, specie, bonds, 459
coupons, or other negotiable paper, which the Company does not receive or carry except through its money department provided for that purpose.

6. The Express Company shall not be liable for loss, damage or detention of said property unless a claim therefor shall be presented to it in writing at this office within ninety days from this date with this contract or a copy thereof annexed; nor shall the Company be liable in any suit to recover for the loss, damage or detention of said property unless the same shall be commenced within one year after such loss, damage or detention shall have occurred, and not afterwards.

460 7. Articles of GLASS, articles contained in glass and fragile articles are accepted at OWNER'S RISK.

8. If any C. O. D. is not paid within thirty days the shipper agrees that the Express Company may return the property, and that he will pay the charges for transportation both ways.

9. The terms and conditions of this contract shall apply to any forwarding or return of said property, and shall inure to the benefit of every carrier to whom the same may be entrusted to complete the transportation.

CHARGES ..... FOR THE COMPANY.....

461 Liability limited to $50, for any shipment of 100 lbs., or less, or to 50c. per pound for any shipment in excess of 100 lbs. unless a greater value is declared and paid for or agreed to be paid for at the time of shipment.

Complainant's Exhibit No. 7, January 11, 1911, J. A. S., Exr.

To be issued only for Money, Specie, Bonds, Coupons, or other Negotiable Paper.

The Company's charge is based upon the value, which must be declared by the Shipper.

ADAMS EXPRESS COMPANY.

462 $..... NEW YORK.....191..

RECEIVED FROM.....

.....Sealed and said to contain.....

Valued at .....Dollars,

Addressed .....

.....

.....

Which the Company agrees to carry upon the following terms and conditions, to which the shipper agrees, and as evidence thereof, accepts this bill of lading.

1. In consideration of the rate charged for carrying said property, which is based upon the value thereof above declared, the shipper agrees that the

Company shall not be liable in any event for more 463
than said sum.

2. If the Express Company has not an agency at the point of destination, it shall carry the property to its agency nearest or most convenient thereto, and there notify the consignee, or deliver the property to some other carrier to continue the transportation. The Adams Express Company shall not be liable for loss occurring after such delivery, nor for detention after having tendered the property to a connecting carrier.

3. The Express Company shall not be required to make free delivery at points where it maintains no free delivery service, nor at any point beyond 464
its established delivery limits.

4. The Express Company shall not be liable for loss or detention of said property caused by civil or military authority, piracy, insurrection, strikes or riot, or by the act of any person acting as an officer of the law, whether with or without lawful process, warrant or authority.

5. The Express Company shall not be liable for loss or detention of said property unless a claim therefor shall be presented to it in writing at this office within ninety days from this date, with this contract or a copy thereof annexed; nor shall the Company be liable in any suit to recover for the 465
loss, or detention of said property unless the same shall be commenced within one year after such loss or detention shall have occured, and not afterwards.

6. The terms and conditions of this contract shall apply to any forwarding or return of said property, and shall inure to the benefit of every carrier to whom the same may be entrusted to complete the transportation.

[NOT NEGOTIABLE.]

Charges,.....

For the Company,.....

Liability limited to the valuation declared by the shipper.

466 **Complainant's Exhibit No. 8, January 11, 1911, J. A. S., Exr.**

READ THE MUTUAL CONDITIONS OF THIS CONTRACT to which the Shipper agrees by accepting this receipt containing the same.

ADAMS EXPRESS COMPANY.

NEW YORK,.....19....

RECEIVED FROM.....

..... FOR COLLECTION:

On ..... $.....

..... $.....

..... $.....

467 ..... $.....

If not paid, said paper to be returned to the depositor, only on demand and surrender of this Receipt, and payment of charges.

It is part of the consideration of this contract, and it is agreed that said ADAMS EXPRESS COMPANY are not to be responsible for any loss or damage which may happen to said paper, or its proceeds, while in the charge of any CARRIER or AGENT, to whom the same may be by them entrusted, nor for any loss or damage by Fire, Railroad or Ocean or River Navigation, or from any cause whatever, unless, in every case, the same be proved to have occurred from the fraud or gross negligence of said

468 Express Company or their servants. *And if the said paper or proceeds is entrusted or delivered to any other Express Company or Agent (which said Adams Express Company are hereby authorized to do), such company or person so selected shall be regarded exclusively as the agent of the depositor, and as such alone liable, and the Adams Express Company shall not be, in any event, responsible for the negligence or non-performance of any such company or person.* Said Adams Express Company shall not be liable for any loss or damage which may happen to said paper, or its proceeds, unless the claim for such loss or damage shall be made in

writing, to this office, within thirty days of the 469
above date, in a statement to which this receipt shall be annexed; nor shall said company be under any obligation to protest said paper, unless an instruction so to do is hereon written. It is further agreed, that said Company shall not, in any event, be liable for any loss, damage or detention caused by the acts of God, Civil or Military Authority, or by Rebellion, Piracy, Insurrection, or Riot, or the dangers incident to a time of war, or by any riotous or armed assemblage.

For the Company, ...

[NOT NEGOTIABLE.]

470

Complainant's Exhibit No. 9, January 11, 1911, J. A. S., Exr.

MAYOR'S OFFICE,
BUREAU OF LICENSES,
CITY HALL,
NEW YORK.

LAW DEPARTMENT,
Office of the Corporation Counsel,
NEW YORK, December 9th, 1902.

GEORGE W. BROWN, JR., Esq.,
Chief of the Bureau of Licenses.

SIR: 471

I have your letter of November 6, 1902, in which you ask to be advised in regard to certain questions relative to the licensing of public carts and express wagons.

You ask first if an expressman, having a place of business outside The City of New York and conveying articles from that location to and delivering the same in The City of New York, and also collecting articles for conveyance and delivery outside thereof, requires an express license from The City of New York to do such business as is done therein.

You also ask if an expressman who is licensed

elsewhere is exempt from the operation of the municipal ordinances, requiring a license here, and cite as a specific example the case of an expressman with a Jersey City license delivering packages in New York City, or taking packages from New York City for delivery in Jersey City. You also refer me to the case of the Long Island Express Company, which collects parcels and carries them to some destination beyond the limits of the City.

It is my opinion that the ordinance, sections 18, 19 and 20, apply to an expressman having a place of business outside of The City and conveying articles to a point within The City or to a point beyond The City, providing he passes through the corporation.

Section 18, of the ordinances applies to all express vehicles which convey certain articles "within or through" The City.

It is not, in my opinion, necessary that the express business be confined entirely to the territory included within The City and it is therefore my conclusion that the ordinances apply to the case of the Long Island Express Company. Although no specific charge is imposed for the wagon service of that Company, as distinguished from the car services, a general charge is imposed by the Company for the collection and transportation of express packages and it is to be presumed that that charge also includes the charge for transportation by wagon, as well as by rail.

In the case of the Jersey City expressman, my conclusion is different. It seems to me that the imposition of a license fee and the prescription of rates, as far as they apply to an expressman, who transports packages or other articles from Jersey City, or from any other point without the State, to The City or through The City, would be an attempt to regulate interstate commerce and would, therefore, be unauthorized. It has been decided by the

Supreme Court of the United States and by the 475
Court of Appeals of this State, that in the case of interstate transportation, the Legislature cannot prescribe the charge to be made for even that part of the transportation which is to be performed within the State, Wabash R. R. Co. *v.* Ill., 118 U. S., 557; Peo. Ex rel. Pa. R. R. Co. *v.* Knight, 171 N. Y., p. 357.

You also wish to be advised as to whether a vehicle licensed as a public cart is prohibited from doing an express business and whether a duly licensed express is prohibited from carrying articles which a public cart is allowed to carry.

Section 6, referring to public carts and cartmen, 476
defines a public cart as "a vehicle used to carry merchandise, household furniture or other bulky articles" and no provision is made to compel a public cartman to give a bond. An expressman, under section 18, is permitted to carry packages, parcels and other articles, and the owner of the express wagon is compelled to give a bond. The distinction between a cartman and an expressman seems to be that an expressman is permitted to carry articles of every nature, whether light or bulky, and is compelled to give a bond, while a public cartman is permitted to carry only articles of a bulky nature and no bond is required. I believe that an 477
expressman may act as a cartman, but a cartman has no right to act as an expressman.

Respectfully yours,

(Signed) GEORGE L. RIVES,
Corporation Counsel.

478 **Complainant's Exhibit No. 10, January 18, 1911, J. A. S., Exr.**

CRAVATH, HENDERSON & DE GERSDORFF
No. 52 William Street.

NEW YORK, March 6, 1908.

DEAR SIR:

Referring to the various conferences which have taken place between you and Mr. Bruce, of our office, in regard to the liability of the Adams Express Company to pay wagon licenses: we beg to say that the Express Company, for the purpose of compromising the matter and without prejudice to
479 its legal rights, is willing to renew the licenses upon twenty wagons which it took out last year and to take out licenses for twenty additional wagons.

As has already been stated to you, all of the wagons of the Adams Express Company which are operating in this City are engaged in interstate commerce, that is, in delivering or receiving packages which have come from or are to be delivered without the State of New York. As has also been stated to you, the wagons in addition to being engaged in interstate commerce do carry a certain amount of local business. Under the opinion given by Hon. George L. Rives, as Corporation Counsel,
480 to your predecessor, Hon. George W. Brown, dated December 9, 1902, a copy of which is enclosed, it seems clear that there is no liability upon the part of the Express Company to pay licenses upon its wagons engaged in interstate commerce. We are of opinion that the mere fact that several of these wagons are incidentally engaged in carrying on local traffic does not make them liable for license fees, and have so advised the Express Company. The Express Company, however, has authorized us to make the above proposition as a settlement of the entire matter and has advised us that the number of wagons which they are willing to license

bears a larger proportion to the total number of 481
their wagons than the amount of local traffic carried on by them bears to the total amount of business of the Express Company in Greater New York.

We trust that the above proposition will be satisfactory to you.

Yours very truly,

(Signed) CRAVATH, HENDERSON & DE GERSDORFF.

Hon. J. P. CORRIGAN,
Chief, Bureau of Licenses,
City Hall,
New York City.

E B B

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Complainant's Exhibit No. 11, January 18, 1911, J. A. S., Exr.

MAYOR'S OFFICE,

BUREAU OF LICENSES,
CITY HALL,
NEW YORK.

MARCH 11, 1908.

MESSRS. CRAVATH, HENDERSON & DE GERSDORFF,
52 William Street,
New York City.

DEAR SIRS:

Your communication of March 6, with reference 483
to the licensing of the Adams Express Company's local wagons, was duly received. In reply would say that the proposition made by you is agreeable to us. I would suggest, however, that the twenty additional licenses which they desire, be taken out in Manhattan. The twenty they had last year were issued by our Brooklyn office, whom I have instructed to renew the same at once.

Yours very truly,

(Signed) JOHN P. CORRIGAN,
Chief, Bureau of Licenses.

484 **Complainant's Exhibit No. 12, January 18, 1911, J. A. S., Exr.**

NEW YORK, November 1910.

TO THE CHIEF OF THE BUREAU OF LICENSES,
City Hall,
New York, N. Y.

SIR:

I hereby apply for a license to drive an express wagon in The City of New York.

I certify that I am a citizen of the United States or that I have declared my intention to become a
485 citizen of the United States, and that I reside at .....

I further certify that I am at present employed by .....doing business at ..... and that my last employment was with..... doing business at .....

Respectfully,

.....Applicant.

I hereby certify that I have known..... .....residing at ...., for .... years .... months, and that to my knowledge he is honest, in-
486 dustrious and a competent driver, and I derived this knowledge (here must be stated how the endorsers reach this opinion)..... ....

(Signed) .....
Bus. Address.....
Res. Address.....
(Signed) .....
Bus. Address.....
Res. Address.....

Complainant's Exhibit No. 13, January 18, 1911, J. A. S., Exr. 487

Only Two Supplements to This Tariff
May Be in Force at Any Time.

I. C. C. No. 564.

Cancelling Tariffs and Parts of Tariffs
Specified on Page 2 of This Tariff.

ADAMS EXPRESS COMPANY

LOCAL MERCHANDISE TARIFF

G

This Tariff applies from Common Points and exclusive offices in Section 1 to exclusive offices in Section 2; from exclusive offices in Section 1 to Common Points in Section 2; from Common Points and exclusive offices in Section 2 to exclusive offices in Section 1; and from exclusive offices in Section 2 to Common Points in Section 1. For rates between Common Points see F. G. Airy's I. C. C. No. 1, and consecutively numbered additional issues and supplements thereto and reissues thereof. 488

SECTION 1

Georgia Kentucky North Carolina Tennessee

SECTION 2

Delaware	Missouri	
District of Columbia	New Jersey	489
Illinois	New York	
Indiana	Ohio	
Iowa	Pennsylvania	
Maryland	Virginia	
Michigan	West Virginia	
Minnesota	Wisconsin	

Governed by Official Express Classification F. G. Airy's I. C. C. No. 483, Supplements thereto or reissues thereof and by exceptions to Official Ex-

press Classification I. C. C. No. 548, Supplements thereto or reissues thereof.
Issued January 20, 1910.
Effective March 1, 1910.

APPROVED:
J. ZIMMERMAN,
General Manager.
Issued by
J. E. CRONIN,
Supt. of Traffic,
61 Broadway, New York, N. Y.

[The reverse side is as follows:]

TARIFFS AND PARTS OF TARIFFS CANCELLED BY THIS TARIFF.

This Tariff Cancels I. C. C. Nos. 4, 5, 116, 147, 148, 153, 154, 158, 159, 160, 163, 167, 168, 194, 195, 196, 197, 204, 205, 213, 217, 225, 229, 230, 233, 234, 235, 236, 237, 239, 240, 241, 242, 251, 252, 260, 271, 273, 277, 278, 279, 283, 287, 288, 289, 290, 291, 294, 295, 296, 297, 300, 301, 302, 305, 306, 308, 309, 310, 320, 321, 322, 323, 325, 326, 330, 331, 332, 335, 339, 340, 341, 342, 366, 369, 374, 376, 379, 380, 382, 388, 390, 397, 398, 423, 424, 477, 478, 479, 480, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 553, 554, 555, 556, 557, 558 and 559.

Also Cancels all Local Merchandise Rates between Offices in Section 1 and Offices in Section 2 of this Tariff which are now shown in the Tariffs listed below.

I. C. C. Nos. 3, 6, 9, 10, 23, 25, 52, 138, 139, 155, 157, 203, 209, 210, 214, 216, 220, 221, 222, 223, 246, 248, 249, 257, 262, 264, 284, 298, 299, 307, 318, 324, 327, 328, 329, 368, 373, 378, 391, 392, 394, 395, 399, 495, 496, 497, 509, 510, 518, 533, 547, 550, 551 and 552.

RULES AND REGULATIONS

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RATES.

All rates in this Tariff are in cents per one hundred pounds and apply on shipments of merchandise.

"From any point of origin not named in this tariff, but between any two points of origin named, the merchandise rate will be the same as from the next more distant point that is named.

"To any point of destination not named in this tariff but between any two points of destination named, the merchandise rate will be the same as to the next more distant point that is named."

TERMINAL AND SWITCHING CHARGES.

494

Shipments carried under this tariff are subject to Terminal and Switching Charges shown in F. G. Airy's I. C. C. No. 530, Supplements thereto or reissues thereof, also in I. C. C. No. 549, Supplements thereto or reissues thereof.

COMMODITY RATES.

Wherever commodity rates are named they remove the application of the Classification scale or class rates to the same commodity and between the same points.

ROUTING.

The Adams Express Company in issuing this tariff reserves to itself the right to route all shipments carried at the rates and between the points shown therein.

495

ABBREVIATIONS.

Explanation of Abbreviations—A., American Express Company; C., Canadian Express Company; GN., Great Northern Express Company; LI., Long Island Express Company; N., National Express Company; NBD., New York and Boston Despatch Express Company; Nor., Northern Express Company; P., Pacific Express Company; S., Southern Express Company; Sr., or (Summer), Summer or Season office; U., United States Express Company; W-b., Way-Bill; W., Wells Fargo & Company Express; West., Western Express Company.

496 **Complainant's Exhibit No. 14, January 18, 1911, J. A. S., Exr.**

NEW YORK, Nov. 13th, 1910.

ADAMS EX. CO.

to DOYLE'S, Dr.

LIVERY AND BOARDING STABLES,

510-512 West 56th Street.

7:30 P. M. 1.00 day.

To board 4 horses Nov. 9-10-11-12-13 $16.00

Rec. pay. MARGARET DOYLE by

SARAH COLAHAN, Admx.

Correct for $16.00,

C. E. WILSON,

497 Supt. Wagon Service.

Complainant's Exhibit No. 15, January 18, 1911, J. A. S., Exr.

RECEIPT. DEPARTMENT OF STREET CLEANING.

No. 40504. (Incumbrances)

NEW YORK, Nov. 15, 1910.

Received from Adams X Co.

Fifteen.....Dollars,

For Two wagons,

Taken by police.

11/11/10 WILLIAM H. EDWARDS,

Commissioner of Street

498 Cleaning,

Per BEEDE,

Clerk of Incumbrances.

Complainant's Exhibit No. 16, January 18, 1911, J. A. S., Exr. 499

LETTER HEAD OF MANGIN LIVERY STABLE.
87-89 MANGIN STREET,
NEW YORK. 11/13/1910.

Received $14.00 for 8 days Board, for Team, Horses. From B. B.

JOHNSON,
Mangin Livery Stable,
By ROSENFELD, Pres.

Correct for $14.00
C. E. WILSON,
Supt. Wagon Service.

500

Complainant's Exhibit No. 17, January 20, 1911, J. A. S., Exr.

This license must be displayed so as to be easily visible to the public at all times while engaged in business.

DOCUMENT. $2.50
No. M1735 G. F.

THE CITY OF NEW YORK
LICENSE No. 2601.
MAYOR'S OFFICE—BUREAU OF LICENSES.
NEW YORK, March 14, 1910.

TO ALL WHOM THESE PRESENTS MAY CONCERN: 501

KNOW YE, that Adams Ex. Co. residing at 59-71 Bway in consideration of TWO and 50/100 Dollars, receipt of which is acknowledged, is hereby licensed to KEEP AND USE AN EXPRESS WAGON IN THE CITY OF NEW YORK. When so engaged, displaying the license number indicated above.

EXPRESS RENEWAL (Seal of City of New York)

This license is subject to the strict observance of all laws, ordinances and regulations enacted for the protection of the city so far as they may apply, is to continue in force for a period of ONE YEAR from the date indicated by indenture on the mar-

502 gin, unless sooner suspended or revoked; and is not transferable.

Expiration Date Mar. 13, 1911.

W. J. GAYNOR,
Mayor.

Countersigned
H. F. SCHLUENZEN,
Cashier.

NOT TRANSFERABLE.

Complainant's Exhibit No. 18, January 20, 1911, J. A. S., Exr.

503 STATEMENT OF BUSINESS DONE DURING PERIOD COVERED BY STRIKE AND SAME PERIOD IN 1908 AND 1909.

1908	1909	1910
Oct. 28-Nov. 17,	Oct. 27-Nov. 16,	Oct. 27-Nov. 16,
1-9-0-8	1-9-0-9	1-9-1-0
$502,849.65	$574,729.42	$85,273.01

Complainant's Exhibit No. 19, January 20, 1911, J. A. S., Exr.

STATEMENT OF BUSINESS AT NEW YORK.

	1908.	1909.	1910.
January	$537,081.78	$603,736.35	$636,600.22
February	532,240.96	596,930.00	623,176.85
March	668,321.62	789,372.07	947,240.41
April	709,493.80	784,125.96	853,783.43
504 May	612,891.07	682,145.09	757,047.03
June	584,434.96	650,595.36	725,903.41
July	520,875.65	585,025.89	617,958.12
August	498,024.02	568,111.37	646,960.42
September	673,675.28	737,637.43	818,456.58
October	779,446.42	848,391.46	794,095.59
November	709,431.56	817,894.66	586,821.37
December	824,249.90	871,185.29	897,995.15
	$7,650,167.02	$8,535,150.93	$8,906,038.58

Complainant's Exhibit No. 20*, Jan. 20, 1911, J. A. S., Exr. 505

ADAMS EXPRESS COMPANY.

VALUABLE SHIPMENTS.

From Bedford Depot. NEW YORK, Oct. 27, 1910.
Writer, Bukowski. Caller, Bukowski. Register No. 237

ARTICLE	VALUE	SHIPPER OR ROUTE NO.	NO.	CONSIGNEE	DESTINATION	CHECK Driver	CHECK Clerk
Pkge.	Shoes	M. E.	1	F. S. King	Boston—Mass		
			2				
			3				
			4				
			5				
			6				
			7				
			8				
			9				
			0				
			1				506
			2				
			3				
			4				
			5				
			6				
			7				
			8				
			9				
			0				

No. Pieces, 20. Received by Driver, W. J. Minard. Time, 1.30 P. M.
No. Pieces.... Received by Clerk..... Time M.

☞ ENTER ON SEPARATE SHEET BULKY VALUABLE SHIPMENTS HANDLED AT PLATFORM SCALES.

[*This exhibit consisted of fourteen sheets similar to that printed above, and contained data with respect to 137 shipments similar to that given above with respect to the first of these shipments. All of these shipments, except seven, were consigned to points in New England. These fourteen sheets were dated on different days between October 27, 1910, and November 9, 1910.]

Complainant's Exhibit No. 21, January 23, 1911, J. A. S., Exr. 507

REGULAR WAGONS TURNING OUT OF STABLES, AS SHOWN BELOW.

	Doubles.	*Singles.*	*Autos.*
Jersey City—Day	117	55	...
" " Night	20	14	...
47th Street—Day	28	14	19
" " Night	3	...	7
56th Street—Day	49	20	...
" " Night	1	1	...
124th Street—Day	19	...	8
Furman Street } Bedford Depot }	...	...	34
	237	104	68—409

Regular Drivers	341
Regular Helpers	325
Regular Motormen	68
Regular Conductors	68
Third Men	33
Total	835

508 **Complainant's Exhibit No. 22, Jan. 23, 1911, J. A. S., Exr.**

APPLICATION

FOR

Situation, Accident Release and Indemnity Agreement, and Agreement of Insurance Against Loss by Negligence or Dishonesty,

WITH

ADAMS EXPRESS COMPANY.

RULES GOVERNING EMPLOYMENT BY THIS COMPANY.

Any person desirous of engaging in the service of this Company must, before appointment, *per-*
509 *sonally fill out and fully execute* this form of Application for Situation, and, if required, enter into Bonds with the Company for the faithful discharge of his duties, as per conditions fixed by the Company and in force at date of his employment or as may be fixed from time to time thereafter and made applicable in any renewal of Bond during his employment by Company, and which conditions he is required to inform himself upon.

Persons employed by this Company are hereby notified that they are not engaged for any particular length of time, and the Company reserves to itself the right to terminate the services of any Employe
510 at pleasure; and the party executing this Application does hereby acknowledge and agree to abide by such notice and conditions, and accepts employment subject to being discharged at any time by the Company or its Agents.

APPLICANT'S RECORD.

1. Name (give Christian and *Middle* name in full) .....
2. What is your Post Office address? (Residence) .....
3. Where born.....
   Date ..... Year .....

4. Age.....years. 511
5. Parents' nationality (Father's).....
   Mother's .....
6. How long have you resided in your present locality? .....
7. Married or single .....If married, state how many children you have.....
8. If wife is alive, give her full name and address .....
9. State fully in the following blanks where and how you have been employed during the past TEN years. If employed jointly by a Railroad and an Express Company, name each Company. Show each and every position, and if unemployed, time and reason. 512

TIME OF SERVICE		EMPLOYED AS	IN SERVICE OF Name of Employer or Corporation, and Present Address	SUPERIOR OFFICER Name and Present Address	GIVE REASON FOR LEAVING
From Month and Year	To Month and Year				

10. Have you ever been discharged from any situation?.....If so, state particulars.....
    .....
11. Have you ever applied for bond and been declined? 513
12. Are you required to furnish other security?.....If so, with what Company and for what amount .....
13. Has anything occurred in your past history that would in any manner jeopardize your standing with, or reflect discredit upon this Company in case it was discovered?.....
14. Have you any imperfection of the arms, hands, legs or feet? If so, what.....
15. Are you now in good health?.....
16. Is your eyesight good?.....

514 17. Is your hearing good?.....

18. Have you ever had any serious illness?.....
What..... When..... Where.....

19. What physician attended you?.....

20. Have you ever received any injury?.....
What..... When..... Where.....

21. What surgeon attended you?.....

22. Are your habits sober and temperate and have they always been so?.....

23. Is your life insured? If so, state for what amount, for how long a time, and in what Company, and to whom payable.....
.....

515 24. Give particulars respecting parents and nearest relative, if living, as follows:
Name of Father.....
Address .....
Business.....
Name of Mother.....
Address .....
Name of nearest male relative on Father's side .....Address.....
Name of nearest male relative on Mother's side .....Address.....
.....

25. Give below the names and addresses of not less
516 than FIVE persons, of respectability—owners of property or business men of good standing—who have known you for the past five years, and who are NOT related to you.

	NAME	OCCUPATION	STREET ADDRESS	CITY
1				
2				
3				
4				
5				
6				
7				

26. Bond required for $..... subject to 517
and in accordance with the Rules and Regulations of the Adams Express Company.
Dated at.....State of.....
the..... day of..... 191..
(Signature of Applicant).....
.....

DESCRIPTION OF PERSON EMPLOYED.

(To be made out by Supt., Route Agent or Agent employing.)

Height.....feet.....inches. Form.....
Weight.....lbs. Complexion.....
Color of hair..... Color of eyes..... 518
Kind of nose.....
If any hair is worn on face, in what manner.....
.....
What color .....
State fully any particular marks or deformity that would be readily recognized .....
.....
.....

I hereby certify that to all appearances the above description and foregoing statements are correct.

.....

Supt., Route Agent or Agent employing the Party.

519

REMARKS.

Under this head the Supt., Route Agent or Agent will give any facts he may think worthy of recording for future reference, stating whether the applicant is personally and favorably known to him. If not, whether he is known in the community where he is to be employed, and what his reputation is for honesty, integrity and sobriety.

.....
.....
.....

United States Circuit Court, Southern District of New York.

WILLIAM M. BARRETT, as President of Adams Express Co.,
v.
THE CITY OF NEW YORK and Others.

EDWARD T. PLATT, as Treasurer of United States Express Co.,
v.
THE CITY OF NEW YORK and Others.

WELLS, FARGO & COMPANY
v.
THE CITY OF NEW YORK and Others.

These are three suits, brought each by a separate express company to restrain the City of New York and various public officers therein from seeking to compel the Complainants and their drivers to take out licenses and pay license fees under certain ordinances of the City of New York, on the ground that complainant companies and their drivers are engaged in interstate commerce as common carriers regulated by the Interstate Commerce Act. The situation of each company is substantially the same as that of the others, and the discussion of the cases will be simplified if it be confined to the facts shown in the case first above entitled. The ordinances in controversy will be found in Chapter 7, Titles, 1, 2, 3, and 4 of the Code of Ordinances of the City of New York. (Edition 1910): such of them as are germain to the issues here involved are referred to in the opinion and the full text of the more important sections is reproduced either in the opinion or in a foot-note.

LACOMBE, *C. J.*:

The fairness and conciseness with which the questions at issue have been presented on the briefs, and the frankness with which each side has conceded what is the result of reported decisions bearing upon the general subject-matter of the discussion has greatly lightened the labor of the court, and has made it unnecessary to undertake any extended review of those authorities; practically there is no dispute as to the law of the case.

The express company takes packages of merchandise coming from other states at some railroad or steamer terminal and transports them by its wagons through the streets and avenues to the addresses of the several consignees. It also collects similar packages addressed to consignees in other states from shippers here and in like manner transports them to such terminals to be forwarded to their respective addresses. It is conceded that the local part of this transportation is an incident of the entire transportation and that such transportation is interstate commerce. The company also transports to and from points within this city packages not coming from or addressed to points without this state. It is conceded that so much of its business is not interstate commerce.

The amount of this domestic business is relatively very small, averaging less than one per cent. of its interstate business; with the interstate business only is this court concerned and in this discussion it will be assumed preliminarily at least that there is no intrastate business to be considered.

Not only is the local transportation of interstate packages interstate commerce, and so within the exclusive jurisdiction of the Federal Government, but that Government has actually taken control and regulated such business by express detailed provisions and by giving to the Interstate Commerce Commission very broad powers of regulation. See the Interstate Commerce Act as amended June 29th, 1906, and June 18th, 1910.

In the course of conducting such business, it is necessary for the express company to make use of the public streets, as a thoroughfare for the passage of the wagons it propels under guidance of its drivers, such wagons becoming a part of the traffic in those streets. That the local authorities have full power, under reasonable regulations, to regulate such traffic is not disputed. The Greater New York Charter, Section 50 grants to the Board of Aldermen power to regulate by general ordinances the use of the streets and sidewalks by foot passengers, animals and vehicles, to regulate the speed of vehicles; to make all such regulations in reference to the running of stages, trucks and cars as may be necessarry for the convenient use and accommodation of the streets, etc., etc.

It is conceded by Complainants that the circumstance that their wagons, when using the public streets, are engaged in interstate commerce does not make them immune from the operation of such general ordinances, even though the exigencies of traffic in a congested centre of population may induce a very liberal interpretation of this grant of power. The local authorities may find it necessary not only to adopt and enforce "rules of the road," but also to prescribe regulations as to size and weight of vehicles, as to the details of their construction (such as tire width relative to weight), as to their motive power, as to identifying marks and numbers, as to the qualifications of their drivers, as to registration and licensing of vehicles and drivers, as to inspection and oversight. There is no reason and the court knows of no authority which will exempt the instruments of interstate commerce from regulations of this sort, adopted for the public safety and convenience, with which other vehicles not engaged in such commerce must comply. It is a legitimate exercise of the police power reserved to the States. Complainants make no contention to the contrary; indeed they fully concede the proposition above set forth. It is understood further, that they concede that such fees or charges as may be ratably imposed on all in order to provide the machinery necessary to carry out such regulations cannot fairly be regarded as a tax on interstate commerce, any more than would be the tolls upon a turnpike.

On the other hand, it is conceded by counsel for the defendants that whatever authority may be given by law to the local legislature to regulate business generally or to regulate the business of certain specified classes of persons, qua business, is inoperative to control a

person engaged in interstate commerce, whose business is already regulated by federal law, since the business of such person is within the exclusive jurisdiction of Congress.

With these concessions in mind we may now turn to the specific ordinances in controversy. The Greater New York Charter, Section 51, provides: "Sec. 51. Subject to the constitution and laws of the State, the board of aldermen shall have power to provide for the licensing and otherwise regulating the business of dirt carts, public cartmen, truckmen, hackmen, cabmen, expressmen, car-drivers and boatmen; of boot-blacks, of pawnbrokers, junk-dealers, keepers of intelligence offices, dealers in second-hand articles, hawkers, peddlers, vendors and scalpers in coal freights; of menageries, circuses and common shows; of bone boiling, fat rendering, and other noxious businesses; and shall have power to regulate or forbid the keeping of dogs. The board of aldermen shall also have power to regudate the rates of fares to be taken by owners or drivers of hackney coaches, carriages, motors, automobiles or other vehicles, and to compel the owners thereof to pay annual license fees. All ordinances in relation to any of the matters mentioned in this section shall be general, shall provide for the enforcement thereof in the manner specified in section '44' of this act as amended, and shall fix the license fees to be paid if any. All licenses shall be according to an established form, and shall be regularly numbered and duly registered as shall be prescribed by the board of aldermen."

The Code of Ordinances contains a group of provisions apparently framed under the authority conferred by this section, dealing with the granting and regulation of licenses, and being Chapter 7 of such Code.

A Bureau of Licenses is established and organized, (Title 1, secs. 300-304), it being provided that all licenses issued by such bureau shall show, among other things, the "privileges allowed." It is next provided in sec. 305 that: "The following businesses must be duly licensed as herein provided, namely, public cartmen, truckmen, hackmen, cabmen, expressmen, drivers, junk dealers, dealers in second-hand articles, hawkers, peddlers, vendors, ticket speculators, coal scalpers, common shows, shooting galleries, bowling alleys, billiard tables, dirt carts, exterior hoists and stands within stoop-lines and under the elevated railroad stations." A penalty of not less than $2, nor more than $25, for each offense is imposed upon any person "who shall engage in or carry on any such business without a license therefor," sec. 306. The term of the license and its suspension or revocation are provided for in sec. 307, and the amount of annual license fees is provided in Sec. 308 (printed in foot-note infra) a separate fee is charged for each cart, hack, or express wagon, which is a convenient method of making the tax imposed conform to the amount of business done, there being in like manner a separate fee charged for each table in a billiard room and for each chair in a boot-black stand. Renewals of licenses are provided for in sec. 309.

The next article, 3 (sec. 310-360) deals with special regulations and rates. Under the first three subdivisions sec. 310-329 are

grouped "Public Carts and Cartmen" and "Public Hacks and Hackmen." A "public cart" is defined by sec. 310 as "Every vehicle of whatever construction, drawn by animal power or propelled by other motive power, which shall be kept for hire or used to carry merchandise, household furniture, or other bulky articles within the City of New York for pay." The owner thereof is declared to be a "public cartman." There is no separate provision in the Code for "truckmen," enumerated in sec. 51 of the Charter and in sec. 306 of the Ordinances: evidently it was assumed that there was no real distinction to be drawn between a cart and a truck. It is provided that every public cart shall show on each outside thereof identifying marks and an official number (sec. 311); and that the amount to be charged for loading, transportation and unloading may be agreed upon in advance, and such contract shall control (sec. 312). The legal rates "for moving household furniture," unless otherwise mutually agreed are prescribed in sec. 313 (printed in the footnote); but there seems to be no prescribed rates for articles not properly "household furniture." To secure payment of his "legal rate of transportation," a public cartman is given a lien, and provision made as to enforcing it (sec. 314).

Sec. 315 provides that: "Every person driving a licensed hack or express, other than the person named in the license therefor, shall be licensed as such driver, and every application for such license shall be indorsed, in writing, by two reputable residents of The City of New York certifying to the competence of the applicant."

Subdivision- 3 and 4 (sec. 316-329) regulate "Public Hacks and Hackmen," the word "hacks" including both "cabs" and "coaches" for transporting persons, and the term "hackmen" including owner or driver, or both (sec. 316). There are provisions as to hackstands and the use thereof. The legal rates of fare for cabs and coaches, both mileage and hourly, are specifically fixed, with right to exact payment in advance. We find provisions for marking and numbering the vehicles, for the disposition of property lost or left therein, and for the settlement of disputes as to the lawful rate of fare, where no agreement has been made.

Sec. 325 provides that "All vehicles for hire shall be licensed, and the owner thereof shall pay the sum of two dollars with his original application as the license fee for each and every vehicles so kept for hire and one dollar for each vehicle for annual renewals." It is difficult to see to what "vehicles for hire" this can apply, in view of the specific provisions as to "public carts," "public hacks" and "public expresses" found elsewhere in the Chapter. Possibly it may apply to vehicles supplied to customers by livery stables.

Subdivision 4*a* (sec. 329*a* to 329*k*) deals with Public Porters, requiring licenses and the wearing of a badge, and regulating the manner in which they shall conduct their business, and the rates they may charge.

Subdivision 5 deals with Expresses and Expressmen. It reads as follows:

SEC. 330. Every vehicle of whatever construction kept or used for the conveyance of baggage, packages, parcels and other articles

within or through The City of New York for pay, shall be deemed a public express, and the owner thereof shall be deemed a public expressman, and the term expressman shall be deemed to include any common carrier of baggage packages, parcels or other articles within or through The City of New York.

SEC. 331. Every public express shall show on each outside thereof the word "Express," or the letters "Exp.," together with the figures of its official number.

SEC. 332. Every owner of a public express shall give a bond to The City of New York for each and every vehicle licensed in a penal sum of $100 with sufficient surety, approved by the Mayor or Chief of the Bureau of Licenses, conditioned for the safe and prompt delivery of all baggage, packages, parcels and other articles or things entrusted to the owner or driver of any such licensed express.

SEC. 333. The legal rates for regular deliveries, unless otherwise mutually agreed, shall be as follows in the city:

Between points within any borough:

Not more than five miles apart, each piece	$0.40
Not more than ten miles apart, each piece	.55
Not more than fifteen miles apart, each piece	.75

Between points in different boroughs: One-half the above rates in addition.

Special deliveries at rates to be mutually agreed upon.

In Subdivisions 5 to 16 (secs. 334-359) are found provisions regulating in more or less detail the following businesses: Junk Dealers, Dealers in Second-Hand Articles, Peddlers, Ticket Speculators, Coal Scalpers, Common Shows, Shooting Galleries, Bowling Alleys, Billiard Tables, Dirt Carts and Cartmen and exterior hoists. Article 4 deals with stands within the Stoop Lines and under Elevated Railroad Stations.

Title 3 (Sec. 373-378) deals with General Regulations and Complaints, License fees received from hackmen, dealers in junk and second-hand articles and for stands within stoop-lines are to be paid into the Sinking Fund and all other license fees into the City Treasury. All licensed vehicles and places of business shall be regularly inspected. Sec. 374 (printed in the foot-note). Licenses must be exhibited on demand; the identifying marks prescribed for licensed vehicles are to be permanently and conspicuously affixed; fines of not more than $5 may be imposed by the Chief of the Bureau of Licenses. Further penalties for violation of the regulations are provided in section 379, printed in the foot-note. A few preliminary points which have been raised may be first disposed of. It has been suggested that the form, arrangement and language of the group of ordinances above cited indicate that the Board of Aldermen which passed them was undertaking to exercise the power conferred by section 51, and was not acting under section 50 of the Charter. This may be so, but it is not material to enquire into the mental processes of the members of a past and gone legisla-

tive body. If some one or more of its enactments are such as it had authority to pass under some specific grant of power, it will not fail because it was voted for under the supposition that authority was given under some different grant of power, not broad enough to warrant such enactment.

It is shown that for years past and with these ordinances in the Code the express company has not (until just prior to the bringing of this suit) been required to take out licenses for the conduct of its interstate business, or to employ only licensed drivers for its wagons engaged in interstate commerce, or to conform to any tariff charges prescribed, nor has there ever been any inspection of its premises or vehicles.

It has, however, taken out licenses for wagons and drivers engaged in conducting its intrastate business. This indicates a practical construction of the ordinances in consonance with complainants' interpretation of them, which might help to turn the scales in a doubtful case but which certainly cannot control, if some particular ordinance is found to be valid and applicable.

This discussion is much simplified by the manner in which it comes up. The application is for a preliminary injunction. Such relief is not granted unless it is apparent that some irreparable damage to the complainant will result if — is postponed till final hearing. As to nearly all the provisions complained of no such damage is shown. The amounts of license fees prescribed for wagons and drivers may be paid under protest, without inconvenience, and no irreparable damage will result from filing the bonds required; no harm will result from marking the wagons with their license numbers, or from allowing the city officials to inspect premises or vehicles. No attempt has been made to regulate the rates to be charged and collected for transportation of interstate packages, nor is any such attempt threatened. The defendants concede that where such rates are not disapproved by the Interstate Commerce Commission the City authorities have nothing to do with them.

It does appear, however, that if the provisions requiring all express wagons to be driven only by drivers licensed as required by sec. 315 are enforced, the ability of the express company to discharge its duties as a common carrier engaged in interstate commerce may be seriously interfered with. A determination, therefore, of the questions raised as to this section is appropriate at this stage of the case.

That section requires that the drivers of certain vehicles therein specified must be licensed, which is calculated to ensure their identification, and that their application for license must be accompanied by a certificate in writing by two reputable residents "to the competence of the applicant," which to some extent—however slight—would tend to secure more careful drivers. If this ordinance were enacted under sec. 50 of the Charter and by its terms applied to all persons driving vehicles in the streets Complainants, on their own statement, would not be here asserting immunity from its provisions. As we have seen it makes no difference under which section of the Charter the Board of Aldermen undertook to act; if the

ordinance is such as they were authorized to enact under any section, and they have enacted it, it will stand. The only question is whether the particular ordinance is so special that it must fall, either because it is not a "general ordinance" which alone are authorized by sec. 50, or because it makes discriminations not to be tolerated under the Fourteenth Amendment to the Constitution of the United States.

Obviously the ordinance is not of universal application; it does not require the drivers of all vehicles to be licensed after a certification as to competency. No doubt it would be a great boon to pedestrians who have to use the streets if such a measure of protection against reckless driving were secured to them, but this ordinance does not go to any such length. It deals only with a relatively small class of drivers. As we have seen the only carts which are required to be licensed are those used by their owners to transport the goods of other persons for pay (sec. 310). Inasmuch as all licensed vehicles are required to be conspicuously marked, a few hours' walk through the business thoroughfares of the city will give some idea of the relatively small number of vehicles which are within the terms of the ordinances. All carts and trucks used by wholesale dealers, by building contractors, breweries, department stores and in a host of other employments—some of them of larger size and a greater menace than any operated by public cartmen or expressmen—are wholly without the purview of this ordinance.

It may be that the class covered by this ordinance is still further restricted. The ordinance is limited in terms to "every person driving a licensed hack or express." By definition (Sec. 310-316) the "public cartmen" whose vehicles must be licensed is operating neither a hack nor an express, so that sec. 315 does not require the person driving his vehicle to be licensed. Sec. 308 provides that the annual license fee for each driver of any licensed vehicle shall be fifty cents; but that may fairly be construed as prescribing only the amount which shall be paid by drivers who are required to be licensed; what drivers shall be licensed being provided for elsewhere. If this construction be correct, the only drivers of carts for the conveyance of goods who are required to be licensed are those who drive express wagons; the drivers of the public carts of "public cartmen" are immune. Such a construction, however, is somewhat doubtful, and since no such interpretation is contended for by the complainants, it will be assumed for the purposes of this case that sec. 315 requires licensed drivers for all public hacks and for all carts or wagons whose owners carry articles owned by others for pay.

This class which includes the truckmen, cartmen, expressmen and hackmen, is apparently a small one, relatively to the total traffic in the streets; but it is not a class arbitrarily constituted, the line of cleavage between it and the residue of the traffic carried on by owners of the vehicles transporting their property and persons is a natural one. It is quite conceivable that some good reason may be shown for a separate classification; it is suggested on defendant's brief that the drivers of the one class are readily differentiated from those of the other classes by the circumstance that they name the

charges for service to customers, collect the amounts due and may contract in some instances for special rates. However this may be the federal courts are not astute to find improper classification where the state has undertaken, in the exercise of its police power, to differentiate between different classes. There must be a very clear showing of inequality, (as in Yick Wo v. Hopkins, 118 U. S. 356) to warrant their interposition. In the case at bar this court is not now prepared to hold that the discrimination between the drivers provided for in sec. 315 and all other drivers is so arbitrary as to require the condemnation of the section under the Fourteenth Amendment. As to the suggestion that Chap. 50 of the Charter forbids the passage of special ordinances, it is sufficient to say that an ordinance covering all instances of a certain class may be a "general" one although it may not be universally applicable to all classes.

It is further suggested that the section should be condemned because it leaves the question, who shall be licensed, to the arbitrary and unqualified discretion of the Mayor, who may revoke any driver's license at his own will, without assigning any reasons for such action, sec. 307. A similar objection was raised before this court in Engel v. O'Malley (opinion filed Aug. 31, 1910, not yet reported). There a statute was criticized because it apparently confided the issuing of a license to the arbitrary discretion of the State Comptroller. Of this criticism it was said: "it is sufficient to say that the terms (of the Statute) may be construed either way; that is, as giving such officer the power capriciously to refuse a license, or as giving him the power to refuse only in the honest exercise of a reasonable discretion. In the absence of a decision by the State Court of last resort construing the language of the Statute, it must be assumed that the latter is the correct interpretation, because otherwise the act would be unconstitutional and it must be assumed that the legislature intended to keep its enactments within the limits fixed by the Constitution."

The motions are denied.

FOOT-NOTE.

The following sections of the Ordinances, which are cited in the foregoing opinion, are printed in full in this foot-note, for convenience of reference.

"SEC. 308. The annual license fees shall be as below enumerated:

For each public cart or truck	$2.00
For each public hack coach	3.00
For each public hack cab	2.00
For each special hack coach	5.00
For each special hack cab	3.00
For each express wagon	5.00
For each junk shop or dealer	20.00
For each dealer in second-hand articles	25.00
For each junk cart or boat	5.00
For each peddler using horse and wagon	8.00

For each peddler using push cart	4.00
For each peddler carrying merchandise	2.00
For each ticket speculator	50.00
For each coal scalper	250.00
For each common show	25.00
For each public shooting gallery	5.00
For each public bowling alley	5.00
For each public billiard table	3.00
For each dirt cart	1.00
For each general hoisting	25.00
For each special hoisting	1.00
For each fruit or soda water stand, or both	10.00
For each newspaper or periodical stand, or both, and in addition also fruit or soda water, or both	15.00
For each movable newspaper stand	1.00
For each newspaper and periodical stand, or both	5.00
For each chair of a bootblack stand	5.00
For each stand under elevated railroad stations	10.00
For each driver of any licensed vehicle	0.50

SEC. 313. The legal rates for moving household furniture, unless otherwise mutually agreed, shall be as follows:

For a single truck load, within two miles	$2.00
For every additional truck load, within two miles	0.50
For loading, and unloading and housing to ground floor	.50
For each flight of stairs, up or down	.25
For double truck load, within two miles	3.00
For every additional mile or part thereof	1.00
For loading, unloading and housing to ground floor	.50
For every flight of stairs, up or down	.50

SEC. 374. The mayor shall have power to appoint inspectors in the Bureau of Licenses to see that the provisions of this ordinance are fully and properly complied with; and all licensed vehicles and places of business shall be regularly inspected, and the result of such inspection shall be indorsed on the official license therefor, together with the date of inspection and the signature of the inspector, and all inspections shall be regularly reported to the Bureau of Licenses.

SEC. 379. Except as hereinbefore otherwise provided, no person shall violate any of the regulations of this ordinance under a penalty of not less than two dollars or more than ten dollars for each offense. No such violation shall be continued under a penalty of one dollar for each day so continued. Any person engaging in or carrying on any business herein regulated without a license therefor, or any person violating any of the regulations of this ordinance, shall be deemed guilty of a misdemeanor, and upon conviction thereof by any magistrate, either upon confession of the party or competent testimony, may be fined not more than two dollars ($2) for each offense, and in default of payment of such fine may be committed

to prison by such magistrate until the same be paid; but such imprisonment shall not exceed ten days."

(Endorsed:) U. S. Circuit Court, Southern District N. Y. Filed Dec. 22, 1910. John A. Shields, Clerk.

United States Circuit Court, Southern District of New York.

WILLIAM M. BARRETT, as President of the Adams Express Company, Complainant,
vs.
THE CITY OF NEW YORK AND OTHERS, Defendants.

EDWARD T. PLATT, as Treasurer of the United States Express Company, Complainant,
vs.
THE SAME, Defendant.

WELLS, FARGO & COMPANY, Complainant,
v.
THE SAME, Defendant.

This cause comes here upon final hearing of bill in equity to restrain the enforcement of certain ordinances passed by the Board of Aldermen of the City of New York.

LACOMBE, *C. J.*:

These ordinances were fully discussed in the opinion filed in disposing of the motions for preliminary injunction in these three suits. 183 F. R. 793. Much testimony has been taken but it merely establishes by competent proof what the court assumed to be the facts when the former decision was made. Neither the new proof nor the exhaustive briefs which are now presented have induced the court to reach a different conclusion upon the main features of the case from that already expressed.

It may be taken for granted that when the group of Ordinances contained in Chapter 7 were enacted,—if they were enacted as a single piece of legislation, which we may assume to have been the fact—the Board of Aldermen had primarily in mind the licensing and otherwise regulating certain specified businesses included in the enumeration of Sec. 51 of the Greater New York Charter. It is difficult to see how any one can read the first two sections without reaching this conclusion. Sec. 305 provides that "the following businesses must be duly licensed, as herein provided;" and Sec. 306 provides that "no person shall engage in or carry on any such business without a license thereof" under certain specified penalties. "Expressmen" are included in the enumeration of Sec. 305, but it is abundantly settled by authority that a person engaged in conducting an interstate express cannot be required by the local or state authorities to take out a local license as a prerequisite to conducting such interstate business in such locality.

Complainant, therefore, is entitled to an injunction restraining defendants from taking any action to enforce complainant's compliance with the provisions of these two ordinances.

Incidentally as part of the local legislation embodied in this chapter of the Ordinances, regulations as to the use of the streets were adopted. They provide, among other things, that wagons used in express business shall be licensed and marked with the word "express" and their official numbers and shall be regularly inspected by city inspectors, a license fee of $5. being charged for each wagon. It is further provided that the drivers of each of such wagons shall be licensed upon certificate as to competency, shall exhibit their official licenses on demand and shall report any change of residence to the Bureau of Licenses. A license fee of fifty cents is required for each driver. The Court has no doubt that it was within the power of the Board of Aldermen to prescribe such regulations, and believing these provisions to be clearly separable from those which regulate generally the doing of an express business (Willcox v. Consolidated Gas Co.) must decline to interfere with their enforcement for reasons sufficiently set forth in the former opinion. The amount of license fee charged is so small that it may fairly be considered merely as providing for the cost of oversight and inspection.

It is also thought that the provision (Sec. 322) requiring a bond to be given for each licensed vehicle in the penal sum of $100. conditioned for the safe and prompt delivery of all baggage, packages, parcels and other articles is a legitimate exercise of the police power, which is not to be condemned because it affects interstate commerce.

When the cause was considered on the application for preliminary injunction the use of automobiles by one of these express companies was not discussed. It now appears that the Adams Express Company operates upwards of 90 automobiles; the drivers of these are chauffeurs. The state has itself taken charge of the regulation of these high-powered machines in public thoroughfares; the vehicles themselves and the chauffeurs are licensed by the State. Chapter 374 of the Laws of 1910 provides that "local authorities shall have no power to pass, enforce or maintain any ordinance, rule or regulation requiring from any owner or chauffeur, to whom this article is applicable, any tax, fee, license or permit for the use of the public highways, or excluding any such owner or chauffeur from the free use of such public highways—and no ordinance, rule or regulation contrary to, or in any wise inconsistent with the provisions of this article, now in force or hereafter enacted, shall have any effect."

These express company automobiles and chauffeurs have been duly licensed by the State. It is not quite clear whether or not defendants are seeking to require additional licenses for such vehicles and drivers to be taken out under the ordinances; but, if they are doing so injunction may issue covering all such vehicles and drivers as hold state licenses.

Let a decree be entered in accordance with the views above expressed.

(Endorsed:) U. S. Circuit Court, Southern District N. Y. Filed Jun- 20, 1911. John A. Shields, Clerk.

At a Stated Term of the Circuit Court of the United States of America for the Southern District of New York, in the Second Judicial Circuit, Held at the United States Court Rooms in the Borough of Manhattan, on the 29th Day of June, 1911.

Present:

Hon. E. H. Lacombe, Circuit Judge.

WILLIAM M. BARRETT, as President of the Adams Express Company, Individually and as a Shareholder in said Company, Suing on Behalf of Himself and All Other Members and Shareholders of said Company, Complainant,

v.

THE CITY OF NEW YORK, WILLIAM J. GAYNOR, as Mayor of the City of New York, and James C. Cropsey, as the Police Commissioner of the City of New York, Defendants.

Final Decree.

This cause having come on for final hearing upon the amended bill of complaint, the answer thereto, the replication, and the proofs oral and documentary duly taken and filed herein,

Now, therefore, upon consideration thereof, and after hearing W. D. Guthrie, of counsel for Complainant, in support of the bill, and William B. Hale, of counsel for Defendants, in opposition thereto, and due deliberation having been had, it is ordered, adjudged and decreed:

First. That Sections 305 and 306 of Chapter 7 of the Code of Ordinances of the City of New York are inoperative and void as an interference with interstate commerce, so far as they purport to require complainant herein to take out a local license as a prerequisite to conducting its interstate express business in the city of New York, and that a writ of injunction issue herein perpetually enjoining and restraining the defendants herein, and each of them, from taking any action to compel complainant to take out such a license under said sections.

Second. That Sections 308, 315, 330, 331, 332, 374, 375 and 376 of Chapter 7 of the Code of Ordinances of the State of New York, so far as they provide that wagons used in the express business shall be licensed and marked with the word "Express," or the letters "Exp." together with their official number, and shall be regularly inspected by city inspectors, and that a license fee of Five Dollars ($5) shall be paid for each wagon, and that the drivers of each of said wagons shall be licensed upon a certificate as to competency, and shall exhibit their official licenses on demand, and report any change of residence to the Bureau of Licenses, and that a license fee of Fifty (50) cents shall be paid for each driver and that a bond shall be given for each licensed vehicle in the penal sum of One Hundred Dollars ($100) conditioned for the safe and prompt delivery of all baggage, packages, parcels and other articles entrusted to the owner or driver of said licensed vehicles, are valid

enactments and not an unlawful interference with interstate commerce, and that an injunction restraining the enforcement of said sections of said ordinance against the complainant be, and the same is hereby, denied.

Third. That said city ordinances so far as they require automobiles used in the express business, and the drivers or chauffeurs thereof, to be licensed are inconsistent with and superseded by Chapter 374 of the Laws of 1910 of the State of New York, and that a writ of injunction issue herein perpetually enjoining and restraining defendants, and each of them, from in any manner requiring additional licenses to be taken out under said ordinances for such express automobiles and chauffeurs as hold licenses from the State of New York.

Fourth. That no costs be recovered by either party as against the other.

Enter:

E. HENRY LACOMBE,
Circuit Judge.

Copy Received June 23, 1911, Guthrie, Bangs & Van Sinderen.—U. S. Circuit Court, Southern District N. Y. Filed June 29, 1911. John A. Shields, Clerk.

United States Circuit Court, Southern District of New York.

WILLIAM M. BARRETT, as President of the Adams Express Company, Individually and as a Shareholder in said Company, Suing on Behalf of Himself and All Other Members and Shareholders of said Company, Complainant,

against

THE CITY OF NEW YORK, WILLIAM J. GAYNOR, as Mayor of the City of New York, and James C. Cropsey, as Police Commissioner of the City of New York, Defendants.

On reading and filing the annexed consent of Rhinelander Waldo, and of the Solicitors for the above named complainant and defendants, dated June 26, 1911, it is

Ordered, that Rhinelander Waldo, as Police Commissioner of the defendant, The City of New York, be and he hereby is substituted as defendant herein, in place of James C. Cropsey, who has resigned from the office of Police Commissioner of the said City, without prejudice to the proceedings already had.

Dated New York, June 27, 1911.

E. HENRY LACOMBE,
Circuit Judge.

United States Circuit Court, Southern District of New York.

WILLIAM M. BARRETT, as President of the Adams Express Company, Individually and as a Shareholder in said Company, Suing on Behalf of Himself and All Other Members and Shareholders of the Company, Complainant,

against

THE CITY OF NEW YORK, WILLIAM J. GAYNOR, as Mayor of the City of New York, and James C. Cropsey, as the Police Commissioner of the City of New York, Defendants.

I, Rhinelander Waldo, Police Commissioner of the defendant, the City of New York, do hereby consent and agree that an order be made and entered in the above entitled suit substituting me as defendant in the above entitled suit in place and stead of my predecessor in office, the defendant James C. Cropsey, resigned, and I adopt the answer heretofore filed on his behalf and all the proceedings heretofore had in this suit as fully to all intents and purposes as if I had been named originally as a party defendant.

Dated New York, June 26, 1911.

R. WALDO.

We hereby consent to the entry of an order substituting as party defendant in place of James C. Cropsey former Police Commissioner of the City of New York, Rhinelander Waldo the present Police Commissioner of the said City, without prejudice to the proceedings heretofore had in the above entitled suit.

Dated New York, June 26th, 1911.

GUTHRIE, BANGS & VAN SINDEREN,
Solicitors for Complainant.

A. R. WATSON,
Per W. B. H., *Solicitor for Defendants.*

(Endorsed:) U. S. Circuit Court, Southern District N. Y. Filed Jun- 27, 1911. John A. Shields, Clerk.

Circuit Court of the United States for the Southern District of New York.

WILLIAM M. BARRETT, as President of the Adams Express Company, Individually and as a Shareholder in said Company, Suing on Behalf of Himself and All Other Members and Shareholders of said Company, Complainant,

against

THE CITY OF NEW YORK, WILLIAM J. GAYNOR, as Mayor of the City of New York, and Rhinelander Waldo, as Police Commissioner of the City of New York, Defendants.

Petition for Appeal.

The above named complainant conceiving himself aggrieved by so much and such part of the decree made on the 29th day of June,

1911, and entered on the 30th day of June, 1911, in the above entitled cause, as denies him the relief prayed for in the bill of complaint filed herein, does hereby appeal from so much and such part of said decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors, which is filed herewith, and prays that this appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which said decree was made, duly authenticated, may be presented to the Supreme Court of the United States.

Dated, New York, July 17, 1911.

GUTHRIE, BANGS & VAN SINDEREN,
Solicitors for Complainant.
WILLIAM M. BARRETT, *Complainant.*

The foregoing claim of appeal is allowed.
Dated, New York, July 17, 1911.

H. G. WARD,
Circuit Judge.

A copy of the within paper has been this day received at the office of the Corporation Counsel. Jul- 17, 1911, Archibald Watson, Corporation Counsel.—U. S. Circuit Court, Southern District N. Y. Filed Jul- 17, 1911. John A. Shields, Clerk.

Circuit Court of the United States for the Southern District of New York.

WILLIAM M. BARRETT, as President of the Adams Express Company, Individually and as a Shareholder in said Company, Suing on Behalf of Himself and All Other Members and Shareholders of said Company, Complainant,

against

THE CITY OF NEW YORK, WILLIAM J. GAYNOR, as Mayor of the City of New York, and Rhinelander Waldo, as Police Commissioner of the City of New York, Defendants.

Assignment of Errors.

The complainant prays an appeal from the decree of this court to the Supreme Court of the United States, and assigns for error the following:

First. That the court erred in denying the complainant a perpetual injunction restraining the enforcement of sections 308, 315, 330, 331, 332, 374, 375 and 376 of Chapter 7 of the Code of Ordinances of the City of New York.

Second. That the court erred in refusing to hold that said sections of the ordinance are unconstitutional and void as an interference with interstate commerce in violation of the provisions contained in section 8 of Article I of the Constitution of the United States.

Third. That the court erred in holding that said sections of the ordinance are severable from sections 305 and 306 of the same chapter of the said Code of Ordinances of the City of New York which it held unconstitutional and void as an attempt to regulate and interfere with interstate commerce in violation of the provisions contained in section 8 of Article I of the Constitution of the United States.

Fourth. That the court erred in refusing to hold that so much of section 379 of the Code of Ordinances of the City of New York as provides that any person engaging in or carrying on the express business without a license therefor shall be deemed guilty of a misdemeanor, is unconstitutional and void as an interference with interstate commerce in violation of the provisions contained in section 8 of Article I of the Constitution of the United States.

Fifth. That the court erred in refusing to hold that sections 305, 306, 307, 308, 315, 330, 331, 332, 333, 373, 374, 375, 376, 378 and 379 of Chapter 7 of the Code of Ordinances of the City of New York constitute a single and inseparable scheme of municipal legislation whereby it is sought to regulate and interfere with the interstate business of the express companies, and as such are wholly unconstitutional and void because an interference with interstate commerce in violation of the provisions contained in section 8 of Article I of the Constitution of the United States.

Sixth. That the court erred in refusing to hold that sections 308, 315 and 374 of Chapter 7 of the Code of Ordinances of the City of New York constitute an arbitrary and unlawful discrimination against express companies, deny to them the equal protection of the laws and deprive them of their property without due process of law in violation of the provisions contained in the Fourteenth Article of Amendment to the Constitution of the United States.

Wherefore complainant prays that the decree of the said Circuit Court in so far as it denies the complainant an injunction restraining the enforcement of the aforesaid sections of the Code of Ordinances of the City of New York be reversed.

GUTHRIE, BANGS & VAN SINDEREN,
Solicitors for Complainant.
WILLIAM M. BARRETT, *Complainant.*

A copy of the within paper has been this day received at the office of the Corporation Counsel. Jul- 17, 1911, Archibald R. Watson, Corporation Counsel.—U. S. Circuit Court, Southern District N. Y. Filed Jul- 17, 1911. John A. Shields, Clerk.

Bond.

NOTE.—On July 17, 1911, the Complainant filed a Bond in the sum of $250.00 for damages and costs on appeal and said Bond was approved by Judge Ward.

THE UNITED STATES OF AMERICA, *ss:*

To the City of New York, William J. Gaynor, as Mayor of the City of New York, and Rhinelander Waldo, as Police Commissioner of the City of New York, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the City of Washington, on the 14th day of August, 1911, next, pursuant to an appeal, duly allowed by the Circuit Court for the Southern District of New York, and filed in the clerk's office of said court on the 17th day of July, 1911, in a cause wherein William M. Barrett, as president of the Adams Express Company, individually and as a shareholder in said Company, suing on behalf of himself and all other members and shareholders of said Company, is the appellant, and you are the appellees, to show cause, if any there be, why the decree in so far as rendered against the said appellant as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Given under my hand at the Borough of Manhattan, in the City of New York, in the District above named, this 17th day of July, in the year of our Lord one thousand nine hundred and eleven, and of the Independence of the United States the one hundred and thirty-sixth.

H. G. WARD,
Judge of the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

[Endorsed:] Eq. 6/239. E. & A. D. 3284. Supreme Court of the United States. William M. Barrett, as President of the Adams Express Company, individually and as a shareholder in said Company, suing on behalf of himself and all other members and shareholders of said Company, Appellant, against The City of New York, William J. Gaynor, as Mayor of the City of New York, and Rhinelander Waldo, as Police Commissioner of the City of New York, Appellees. Original citation. William D. Guthrie, Solicitor for Appellant, 44 Wall Street, New York City, Borough of Manhattan. U. S. Circuit Court, Southern District, N. Y. Filed Jul- 17, 1911. John A. Shields, Clerk. A copy of the within paper has been this day received at the Office of the Corporation Counsel Jul- 17, 1911. Archibald R. Watson, Corporation Counsel.

Circuit Court of the United States for the Southern District of New York.

WILLIAM M. BARRETT, as President of the Adams Express Company, Individually and as a Shareholder in said Company, Suing on Behalf of Himself and All Other Members and Shareholders of said Company, Complainant,

against

THE CITY OF NEW YORK, WILLIAM J. GAYNOR, as Mayor of the City of New York, and Rhinelander Waldo, as Police Commissioner of the City of New York, Defendants.

Petition for Appeal and Allowance Thereof.

The above named defendants conceiving themselves aggrieved by the final decree herein, dated the 29th day of June, 1911, and entered in the office of the clerk of said court on the 30th day of June, 1911, in the above entitled cause hereby appeal from said decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors, which is filed herewith, and pray that their said appeal may be allowed and that the bond on appeal presented herewith may be approved and that a citation issue, directed to the above named complainant, commanding him to be and appear before the said Supreme Court of the United States upon the return day thereof, and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be transmitted to said Supreme Court of the United States and that upon the filing of said appeal bond all further proceedings in this court be suspended until the determination of said appeal by said Supreme Court of the United States, to the end that said decree of this court may be reversed and such decree made as to said Supreme Court of the United States may seem just.

Dated, New York, August 3rd, 1911.

WILLIAM B. HALE,
Counsel for Defendants-Appellants,
40 Wall Street, New York, N. Y.

Appeal allowed and ordered accordingly.
Dated, New York, August 3, 1911.

H. G. WARD,
Circuit Judge.

(Endorsed:) Copy Received Aug. 3, 1911. Guthrie, Bangs & Van Sinderen, Solicitors for Complainants.—U. S. Circuit Court, Southern District N. Y. Filed Aug. 4, 1911. John A. Shields, Clerk.

Circuit Court of the United States for the Southern District of New York.

WILLIAM M. BARRETT, as President of the Adams Express Company, Individually and as a Shareholder in said Company, Suing on Behalf of Himself and All Other Members and Shareholders of said Company, Complainant,

against

THE CITY OF NEW YORK, WILLIAM J. GAYNOR, as Mayor of the City of New York, and Rhinelander Waldo, as Police Commissioner of the City of New York, Defendants.

Assignment of Errors.

Now come the above-named defendants and appellants herein and say that in the record and proceedings of said court herein, and in the decree made herein and dated the 29th day of June, 1911, and entered in the office of the clerk of said court on the 30th day of June, 1911, there is manifest error in this, to-wit:

First. That the court erred in finding and decreeing that Sections 305 and 306 of Chapter 7 of the Code of Ordinances of the City of New York are inoperative and void as an interference with interstate commerce to any extent, and in enjoining the defendants herein from taking any action to compel complainant to take out a license under said sections, instead of construing said sections in connection with the other sections of the same ordinance, held valid by the court, and as so construed upholding said Sections 305 and 306 as valid and constitutional enactments.

Second. That the court erred in construing said ordinances as purporting to require of the complainant a local license as a pre-requisite to conducting an interstate express business in the City of New York.

Third. That the court erred in granting an injunction restraining defendants from compelling complainant to take out a local license as a pre-requisite to conducting an interstate express business in the City of New York, because it appears without contradiction that defendants have never attempted or threatened to require such a license and claim no right to require such a license.

Fourth. That the court erred in holding and decreeing that said Code of Ordinances of the City of New York so far as they require automobiles used in the express business, and the drivers or chauffeurs thereof to be licensed, are inconsistent with and superseded by Chapter 374 of the Laws of 1910 of the State of New York, and in granting an injunction restraining defendants from in any manner requiring additional licenses to be taken out under said ordinances for such express automobiles and chauffeurs as hold licenses from the State of New York.

Fifth. That the court erred in granting any relief against the defendants.

Sixth. That the court erred in not dismissing the bill of complaint for want of equity.

Seventh. That the court erred in not dismissing the bill of complaint upon the merits, with costs.

Wherefore, defendants and appellants pray that the said decree of the said Circuit Court of the United States for the Southern District of New York, for the errors aforesaid, be reversed and that the said court be instructed to enter a decree dismissing the bill of complaint herein upon the merits and for such other relief as may be just.

WILLIAM B. HALE,
Counsel for Defendants-App'l'ts,
40 Wall Street, New York, N. Y.

Dated, New York, August 3rd, 1911.

(Endorsed:) Copy received Aug. 31, 1911. Guthrie, Bangs, & Van Sinderen, Solicitors for Complainant.—U. S. Circuit Court, Southern District N. Y. Filed Aug. 4, 1911. John A. Shields, Clerk.

Bond.

NOTE.—On August 4, 1911, the Defendants filed a Bond in the sum of $250.00 for damages and cost on appeal and said Bond was approved by Judge Ward.

THE UNITED STATES OF AMERICA, *ss:*

To William M. Barrett, as President of the Adams Express Company, Individually and as a Shareholder in said Company, Suing in Behalf of Himself and All Other Members and Shareholders of said Company, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States to be held in the City of Washington, District of Columbia on the 28th day of August, 1911, next, pursuant to an appeal duly allowed by the Circuit Court of the United States for the Southern District of New York, and filed in the Clerk's office of said court on the 3rd day of August, 1911, in a cause wherein the City of New York, William J. Gaynor, as Mayor of the City of New York, Rhinelander Waldo as Police Commissioner of the City of New York are the appellants, and you are the appellee, to show cause, if any there be, why the decree in so far as rendered against said appellants as in said appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Given under my hand at the Borough of Manhattan, in the City of New York, in the District and Circuit above named this 3rd day of August in the Year of our Lord 1911, and of the Independence of the United States one hundred and thirty-sixth.

H. G. WARD,
Judge of the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

[Endorsed:] Eq. 6/239. E. & A. D. 3289. Circuit Court of the United States, Southern District of New York. William M. Barrett, as President of the Adams Express Company, etc., Com-

plainant, v. The City of New York et al., Defendants. Citation on appeal. William B. Hale, Counsel for Defendants-Applnts., 40 Wall Street, New York City. Due and timely service of the within paper is hereby admitted this 3rd day of August, 1911. Guthrie, Bangs & Van Sinderen, Solicitors for Complainant. U. S. Circuit Court, Southern District, N. Y. Filed Aug. 4, 1911. John A. Shields, Clerk.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Shields, Clerk of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, do hereby certify that the foregoing pages, numbered from one to 215 inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the cause entitled, William M. Barrett, as President of the Adams Express Company, individually and as a shareholder in said Company, suing on behalf of himself and all other members and shareholders of said Company, Complainant-Appellant, against The City of New York, William J. Gaynor, as Mayor of the City of New York and Rhinelander Waldo, as Police Commissioner of the City of New York, *Defen* Defendants-Appellees, and William M. Barrett, as President of the Adams Express Company, individually and as a shareholder in said Company, suing on behalf of himself and all other members and shareholders of said Company, Complainant-Appellee, against The City of New York, William J. Gaynor, as Mayor of the City of New York and Rhinelander Waldo, as Police Commissioner of the City of New York, Defendants-Appellants, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 14th day of August, in the year of our Lord one thousand nine hundred and eleven, and of the Independence of the said United States the One Hundred and Thirty-sixth.

[Seal of the Circuit Court, South. Dist. New York.]

JOHN A. SHIELDS, *Clerk.*

[Endorsed:] United States Supreme Court. William M. Barrett, as President of the Adams Express Company, etc., Complt.-Appellant, vs. The City of New York et al., Def'ts-Appellees. William M. Barrett, as President of the Adams Express Company, etc., Complt.-Appellee, vs. The City of New York et al. Def'ts-Appellants. Transcript of Record. Appeal from the Circuit Court of the United States for the Southern District of New York.

Endorsed on cover: File No. 22,840. S. New York C. C. U. S. Term No. 764. William M. Barrett, as president of The Adams Express Company, &c., appellant, vs. The City of New York et al. Term No. 22,841. File No. 765. The City of New York et al., appellants, vs. William M. Barrett, as president of The Adams Express Company, &c. Filed August 19, 1911. File Nos. 22,840 & 22,841.

(22,842 and 22,843.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 766.

EDWARD T. PLATT, AS TREASURER OF THE UNITED STATES EXPRESS COMPANY, ETC., APPELLANT,

vs.

THE CITY OF NEW YORK ET AL.

No. 767.

THE CITY OF NEW YORK ET AL., APPELLANTS,

vs.

EDWARD T. PLATT, AS TREASURER OF THE UNITED STATES EXPRESS COMPANY, ETC.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 29, 1911.

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1

UNITED STATES OF AMERICA,
Second Circuit,
SOUTHERN DISTRICT OF NEW YORK. } ss.:

IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF NEW YORK, IN THE SECOND CIRCUIT. 2

TO THE HONORABLE THE JUDGES OF SAID COURT, IN CHANCERY, SITTING:

Your orator, Edward T. Platt, brings this his bill of complaint against the City of New York, the Mayor and Commonalty of the City of New York, William J. Gaynor, as Mayor of the City of New York, William J. Gaynor, James C. Cropsey, as Commissioner of Police of the City of New York, James C. Cropsey, Clement 3
J. Driscoll, as Deputy Commissioner and all other deputy commissioners, Max F. Smittberger, Chief Inspector and all other Inspectors, officers, members, agents and servants and employees of the Department of Police of the City of New York, Francis V. F. Oliver, Chief of the Bureau of Licenses of the City of New York, and all agents or employees of said bureau and all officers, employees, agents and servants of the City of New York, respectfully presents and charges:

1. That your orator now is and for many years con- 4
tinuously last past has been a resident and citizen of the City of New York.

That your orator brings this bill of complaint as Treasurer of the United States Express Company and as a shareholder and member thereof, on behalf of himself and all members and shareholders of said Company. That the said United States Express Company is a voluntary unincorporated association or joint stock company organized under the common law of the State of New York and

5 is composed of more than fifteen hundred members or shareholders who own one hundred thousand equal shares or interests in said Company; that all said members have a joint ownership and interest in the cause of action hereinafter stated but that they are too numerous to be joined as parties hereto and it is impracticable, if not impossible, to bring them and each of them before this Honorable Court to join in this, your orator's said bill of complaint because they are widely scattered and live in different parts of more than fif-
6 teen states in the United States and that some of them are now temporarily beyond the seas, and your orator therefore, as such treasurer and member and shareholder of said Company brings this suit not only on his own behalf but also on behalf of said Company and each and every of its members.

That under the Articles of Association of said Express Company it is provided that said Company may sue and defend in the name of its Treasurer and by Statutes of the State of New York it is provided that
7 joint stock associations composed of more than seven members may sue and defend in the name of the Treasurer of such associations; that the said United States Express Company is such a joint stock association and is composed of more than seven members.

That the defendant, the City of New York, is and at all times hereinafter mentioned was a municipal corporation organized under the law of the State of New York and defendant William J. Gaynor is and since January 1st, 1910, has been mayor of said City and
8 the other defendants are and for some time have been officers of said City and acting as such officers in the said several capacities.

2. That the said Express Company has the right and power to engage and is engaged in, among other things forwarding for hire by express from various points in the United States including the City of New York in the State of New York, to various other points in the United States. That the said Express Company is engaged in the forwarding of commodities by express in, through, and within thirty-eight of the states

and territories of the United States and is engaged in interstate commerce within the meaning of Section 1 of the Act to Regulate Commerce and Acts amendatory thereof and supplementary thereto and under said Section 1 of said Act as amended it is required by the provision of said Section 1 of said Act as amended to provide and furnish transportation for such commodites upon reasonable request therefor.

3. That ever since the organization of said Express Company it has engaged in the business of forwarding for hire by express valuables and articles of merchandise as aforesaid and that one of its principal offices for receiving and delivering said valuables and articles of merchandise is in said City of New York and that it has had and now has, in its possession, and owns and controlls for the purpose of receiving and delivering merchandise in said City of New York more than 400 horses and 250 wagons, of the value largely in excess of $140,000.

4. That said Express Company has heretofore entered into many contracts and engagements and is now bound by said contracts and engagements to receive and transport for hire articles of value and merchandise delivered and to be delivered to it from various persons, partnerships and corporations engaged in the mercantile and other businesses in said City of New York, for delivery by it to persons, partnerships and corporations in other cities, towns and villages throughout the United States and foreign countries.

That the said Express Company has entered into and is bound by the terms of a contract with the United States Government, whereby it is bound to and does from time to time and from day to day receive, transport and deliver large shipments of currency between the United States Treasury in Washington City, in the District of Columbia, and New York City, in the State of New York, and other cities in the United States, of great value. In many instances the shipments exceed $1,000,000 each in value.

That the said Express Company has heretofore

entered into and is now entering into many contracts and engagements in many towns and villages, cities, states and countries outside the said State of New York, to deliver valuables and articles of merchandise to persons, partnerships and corporations located and doing business in said City of New York, and that such contracts and obligations so heretofore entered into amount in value each day to a sum largely in excess of $2,000.00.

That in carrying on and conducting its said business as aforesaid in the City of New York, it is necessary for said Express Company to and it does collect and receive from various banks, stores, manufactories, business establishments, express and railroad depots located in said City articles of value and merchandise, and deliver the same to railway and express depots, places of business, mercantile establishments and banks in said City of New York, and that in so doing said Express Company has now in its employ in and about the conduct and operation and protection of its said business over five hundred men, to whom it is paying wages of $2,000.00 per day.

5. The amount involved in this controversy, exclusive of interest and costs, largely exceeds the sum of $2,000.00.

6. That the said United States Express Company was organized and began business as aforesaid in or about the year 1854, and since said time has been continuously engaged in forwarding merchandise by express under the conditions aforesaid; that it has during said period operated within the City of New York, without special license from the city authorities of said City. That by Chap. 410, Sec. 86, of the Laws of New York for the year 1882, and the acts amendatory thereof, which said provisions is known as Sec. 51 of the Greater New York Charter, entitled, "Board of Aldermen; Licensing and Regulating certain trades or business; dog license," etc., the said Aldermen were authorized and empowered as follows:

"§ 51. Subject to the constitution and laws of the State, the Board of Aldermen shall have power to provide for the licensing and otherwise regulating the business of dirt carts, public cartmen, truckmen, hackmen, cabmen, expressmen, car drivers and boatmen; of bootblacks; of pawnbrokers, junk dealers, keepers of intelligence offices, dealers in second hand articles, hawkers, peddlers, vendors and scalpers in coal freights; of menageries, circuses and common shows; of boneboiling, fatrendering and other noxious businesses; and shall have power to regulate or forbid the keeping of dogs. The Board of Aldermen shall also have power to regulate the rates of fare to be taken by owners or drivers of hackney coaches, carriages, motors, automobiles or other vehicles, and to compel the owners thereof to pay annual license fees. All ordinances in relation to any of the matters mentioned in this section shall be general, shall provide for the enforcement thereof in the manner specified in Section 44 of this Act, as amended, and shall fix the license fee to be paid, if any. All licenses shall be according to an established form, and shall be regularly numbered and duly registered as shall be prescribed by the Board of Aldermen.

That thereafter and in or about 1899 the said Board of Aldermen did create a Bureau of Licenses, attached to the Mayor's office, for the purpose of issuing and recording all licenses authorized by resolution or ordinance of the Board of Aldermen, or now in force in any part of said City, and provided in reference thereto among other things as follows:

"Code of Ordinances of The City of New York.

Chapter 7.

Title 2.—The Granting and Regulation of Licenses:

Article 1. Business Requiring a License:

"Sec. 305. The following business must be duly licensed as herein provided, namely: public cartmen, truckmen, hackmen, cabmen, expressmen, drivers,

junk dealers, dealers in second hand articles, hawkers, peddlers, vendors, coal scalpers, common shows, shooting galleries and bowling alleys, billiard tables, dirt carts. exterior hoists and stands within stoop lines and under the stairs of the elevated railroad stations (Ordinance approved May 22, 1899, Section 1).

"§ 306. No person shall engage in or carry on any such business without a license therefor under a penalty of not less than $2.00, nor more than $25.00 for each offense, and for the purposes of this ordinance the term person shall include any human being or lawful association of such."

"ARTICLE 2.—LICENSES AND LICENSE FEES.

§ 307. All licenses shall be granted by authority of the Mayor and issued by the Bureau of Licenses for a term of one year from the date thereof, unless sooner suspended or revoked by the Mayor, and no person shall be licensed except a citizen of the United States, or one who has regularly declared intention to become a citizen.

The Mayor shall have power to suspend or revoke any license or permit issued under the provisions of this ordinance. The Mayor shall also have power to impose a fine of not more than $5.00 or less than $1.00 for any violation of the regulations herein provided, and to suspend the license pending payment of such fine, which when collected shall be paid into the Sinking Fund for the redemption of the City debt.

§ 308. The annual license fee shall be as below enumerated:

For each public cart or truck	$2.00
For each public hack coach	3.00
For each public hack cab	2.00
For each special hack coach	5.00
For each special hack cab	3.00
For each express wagon	5.00
For each junk shop or dealer	20.00
For each dealer in second-hand articles	25.00

For each junk cart or boat	$5.00	25
For each peddler using horse and wagon	8.00	
For each peddler using push cart	4.00	
For each peddler carrying merchandise	2.00	
For each coal scalper	250.00	
For each common show	25.00	
For each public shooting gallery	5.00	
For each public bowling alley	5.00	
For each public billiard table	3.00	
For each dirt cart	1.00	
For each general hoisting	25.00	26
For each special hoisting	1.00	
For each fruit or soda water stand or both	10.00	
For each newspaper or periodical stand or both, and in addition also fruit or soda water or both	15.00	
For each movable newspaper stand	1.00	
For each newspaper and periodical stand or both	5.00	
For each chair of a bootblack stand	5.00	
For each stand under elevated railroad stations	10.00	27
For each driver of any licensed vehicle	.50	

ARTICLE 3. SPECIAL REGULATIONS AND RATES.

2. Drivers of licensed Vehicles.

SECTION 315. Every person driving a licensed hack, or express, shall be licensed as such driver, and every application for such license shall be endorsed in writing by two reputable residents of the City of New 28
York, testifying to the competence of the applicant. No owner of a licensed hack or express shall employ an unlicensed driver under a penalty of $10.00 for each and every offense.

5. Expresses and Expressmen.

SECTION 330. Every vehicle of whatever construction kept or used for the conveyance of baggage, packages, parcels and other articles within or through the City of New York for pay, shall be deemed a public express, and the owner thereof shall be deemed a public ex-

29 pressman, and the term expressman shall be deemed to include any common carrier of baggage, packages, parcels or other articles within or through the City of New York.

SECTION 331. Every public express shall show on each outside thereof the word "Express," or the letters "Exp." together with the figures of its official number.

SECTION 332. Every owner of a public express shall give a bond to the City of New York for each and
30 every vehicle licensed in the sum of $100 with sufficient surety, approved by the Mayor or Chief of the Bureau of Licenses, conditioned for the safe and prompt delivery of all baggage, packages, parcels and other articles or things entrusted to the owner or driver of any such licensed express.

TITLE 3.—GENERAL REGULATIONS AND COMPLAINTS.

SECTION 373. All license fees received by the Bureau
31 of Licenses shall be regularly paid over to the City Treasury, except the license fees received from hack men, dealers in junk and second-hand articles, and stands within stoop lines, which shall be paid into the Sinking Funds for the redemption of the City debt.

(Ord. app. May 22, 1899).
(Section 56)

SECTION 374. The Mayor shall have power to appoint inspectors in the Bureau of Licenses to see that
32 the provisions of this ordinance are fully and properly complied with, and all licensed vehicles and places of business shall be regularly inspected, and the result of such inspection shall be endorsed on the official license therefor, together with the date of inspection, and the signature of the inspector and all inspections shall be regularly reported to the Bureau of Licenses (*Id.*, Section 57).

SECTION No. 375. Every licensee shall have an official license and exhibit the same upon the demand of any person, and shall report within three days to the

Bureau of Licenses any change of residence or place of business, and shall at times perform the public duties of the business licensed when called upon so to do, if not actually unable. (*Id.*, sec. 58.)

TITLE 4.—VIOLATIONS.

SECTION 579. Except as hereinbefore otherwise provided, no person shall violate any of the regulations of this ordinance under a penalty of ten dollars for each offense. No such violation shall be continued under a penalty of ten dollars, for each day so continued. Any person engaging in or carrying on any business herein regulated without a license therefor, or any person violating any of the regulations of this ordinance, upon conviction thereof by any Magistrate, either upon confession of the party of competent testimony, may be fined not more than ten dollars for each offense, and in default of payment of such fine may be committed to prison by such Magistrate until the same be paid; but such imprisonment shall not exceed ten days.

7.—That the City of New York has no authority to make such provisions applicable to wagons or drivers used in carrying on interstate commerce; that none of the said provisions does or can be valid or binding upon wagons and drivers used and employed in the conduct of interstate commerce; that the said provisions hereinbefore set forth or referred to have all at all times and continuously been construed by the authorities of said City of New York as being inapplicable to such wagons and drivers and have been so construed, held and regarded until after the beginning of the strike and its consequent acts of violence and lawlessness hereinafter referred to; that in or about the month of November, 1902, the said question was submitted by the Bureau of Licenses to the then Corporation Counsel of the City of New York for his opinion, and that he delivered his said opinion in writing upon said subject in reply to said inquiry, a

true copy of said opinion is hereto annexed, marked Exhibit A and made a part hereof.

8.—That your orator is informed and believes and therefore states it to be a fact, that on or about the day of November, 1910, William J. Gaynor, Mayor of the City of New York, did direct the Department of Police, through its proper officers, to enforce the said provisions with reference to the said wagons of the said Express Company, and to arrest and take into custody and deprive of their liberty the drivers of said wagons, and to enforce against said Express Company the provisions of said ordinance wherein it is provided that the business of said expressmen must be licensed and that the said police of the City of New York have arrested and deprived of his liberty one of said drivers of said wagons while so engaged and have threatened to and will unless enjoined by the order of this Honorable Court, arrest and take into custody and deprive of their liberty further drivers of said wagons and remove them from the wagons of the said Express Company operating in the City of New York and engaged in the forwarding of interstate shipments of express, and that the said defendants have seized and impounded many wagons while so engaged and have threatened to and will, unless enjoined by the order of this Honorable Court seize and impound the wagons of the said United States Express Company and withdraw them from service in the forwarding of interstate commerce by express to enforce the payment of the license tax on said wagons alleged by the said defendants to be due under the ordinances hereinbefore set forth; that on November 9th, 1910, and heretofore, the American Express Company applied for licenses for a number of its men and wagons at the Bureau of Licenses of the City of New York and said Licenses were unwarrantably delayed as follows: The defendant Francis V. S. Oliver, Chief of the Bureau of Licenses, his assistants, agents, and employes refused the license for said wagons before the same had been inspected, and thereupon detailed an inspector to inspect said

wagons; said Oliver, his assistants, and agents, further 41
stated that the applications for licenses for drivers could not be passed upon until letters had been written to each of the two persons required to certify that the applicant was "honest, industrious and competent" and until replies to said letters had been received, and it was further said that there were many thousands of applications pending prior to said applications for drivers' licenses filed by the American Express Company, which must be attended to in their order, and that as the Department had but 42
a few clerks it would take several weeks before said applications could be passed upon; that prior to the time of the present strike it was possible and customary for expressmen to obtain licenses for their wagons and drivers without delay.

9. Your orator further says that on the 22nd day of October, 1910, a small number of helpers made a demand upon its Agent for an increase in wages with a threat that they would immediately strike if such demand was not granted; that said agent was not author- 43
ized to pass upon such demands, and so informed said helpers, that they thereupon left their employ in the Company and that a great numbers of sympathizers and disorderly characters coerced by threats and violence a great portion of this company's employes to abandon their work through threats, violence and fear of personal injury, and that ever since said date your orator's business has been interrupted, disturbed, and to a great extent prevented by disorderly mobs of rioters in the streets of the said City of New York and the 44
City of Jersey City, New Jersey, and that its men have been assaulted; its property destroyed, and its business interrupted, and that it has been unable to transact any business whatsoever, except under protection either of armed men or of the police force.

10. Your orator further shows that by reason of the intimidation and violence of the said mobs and rioters most of its drivers have left the employ of the said express company and the said express company has been compelled to employ other drivers to take their

45 places, and notwithstanding, no demand had ever been made upon said express company or upon its former drivers for licenses, the officials of The City of New York have threatened to withdraw, and in certain instances have withdrawn police protection from the said wagons and drivers of the said express company while engaged in such interstate commerce upon the ground and because of the fact that the said wagons or drivers did not have licenses as now demanded by the City of New York under the pro-
46 visions of the said ordinances of the City of New York heretobefore set forth or referred to and have threatened to discriminate, and in certain instances have discriminated against the said wagons or drivers upon said ground and have demanded that such licenses shall be had as a condition precedent to the furnishing to said wagons and drivers of police protection.

11. That the said express company has entered into many large contracts to make deliveries in the said City of New York for large mercantile institutions and
47 other industries promptly and immediately upon the arrival of certain deliveries of express in said City, and that said express contracted to be delivered by said express company has arrived and is arriving in said City from day to day and will continue to arrive in said City from day to day, and much of said express is what is known and described as "perishable freight," and cannot be held by said express company in said depots, warehouses, storehouses, cars, or elsewhere, but must be promptly delivered to consignees thereof
48 in the said City of New York upon its arrival in said City; that there is now in the depots, warehouses and storehouses owned, controlled, leased, rented or operated by said express company many tons of said merchandise, to the value of many thousands of dollars; that said express company is endeavoring to make prompt deliveries of said express; that the said express company now is and for many years last passed has been duly authorized under the laws of the United States to carry goods in bond for immediate transportation between ports of entry designated in said laws,

including the said City of New York, and pursuant to such authorization it has transported and is daily transporting between said City of New York and said other ports of entry outside thereof, and also between said other ports of entry and through the City of New York by its wagons and teams aforesaid, goods in bond, for which said goods it is responsible to the United States and is under bond to the United States to safely carry and deliver same to the collector at the port of destination; that unless restrained by order of this Honorable Court they will seize the wagons and arrest the drivers of said express company and thereby prevent the said express company from making deliveries of and transporting said goods in and through the said City of New York by means of its wagons and teams aforesaid, and between the various depots and express terminals within and without the said City, in the manner and under the terms and conditions by the Statute of the United States in that behalf provided.

12. That as to all articles of value and merchandise received by the said express company from points outside of the City of New York consigned to various firms, partnerships and corporations hereinbefore specifically referred to, the charge so made by said express company covers delivery of such articles of value and merchandise to the respective places of business or residences of the consignees of the said articles by means of the wagons and teams of said express company hereinbefore referred to, and the charge made by said express company for the expressage of all goods received by it from the consignors in said City of New York consigned to points outside of the said City of New York, covers the transportation of said articles by means of wagons and teams of said company hereinbefore referred to, from the places of business or residences of said consignors or from the office of the said express company where same is received by said express company in the said City of New York to the freight or express depot in the said City of New York from which the same are transported in said City of New York to points of destination outside of the said

53 City, which carriage of the said articles of value and merchandise by the wagons and teams of the said express company hereinbefore referred to, is part of the continuous transportation of said articles of value and merchandise.

13. That if the said express company is further prevented from carrying on its said business of said defendants, as herein set forth, its said business will be further seriously crippled and injured; and its teams, wagons and employees will be compelled to
54 remain idle to the great loss and damage of the said company, which loss will arise from the following causes: Loss of profits, loss of trade in business, damages for non-performance of agreements, loss of customers who will sever their business relations with the said express company, and the payment of the fixed expense occasioned by the wrongful acts of said defendants herein set forth, amounting to more than two thousand dollars ($2,000.00), and

Forasmuch, therefore, as your orator is without rem-
55 edy in the premises, except in a court of equity, and to the end that said defendants heretofore named, and each and every one of the same, may full, true and perfect answer make to this your orator's bill of complaint, but not under oath, the answer under oath of each and every of said defendants being hereby expressly waived, and that said defendants and each of them and those employed by them and each and everyone of the servants and agents of said defendants, be restrained and enjoined from
56 demanding the said licenses and from seizing or otherwise interfering with, hindering, obstructing or stopping any of the wagons or business of said Express Company, in the maintenance, conduct, management or operation of any of its business in interstate commerce, or from carrying its drivers in the city of New York.

May it please your Honors to grant to your orator a temporary injunction pending final hearing of this case, whereby said defendants and each and every of the same, their agents and servants, or any or either of them, may thereby be ordered and commanded to

refrain and be thereby restrained and enjoined as hereinbefore prayed, and that an order may be entered herein directing that the said restraining order shall be enforced and be binding upon the said defendants and members, agents and employees thereof; and that same shall be binding upon each and all of the defendants named herein, from and after service of said order upon them, and each of them, by delivery to them, a copy thereof, or by reading a copy of same to them, or by posting same in such conspicuous places at the place of business of said Express Company, and upon the wagons owned or employed by it as aforesaid, or any other public place, in such manner and printed in such type that the same may be read by said defendants or any other person or persons coming near said wagons or public places as aforesaid, and that such order and each and every part thereof shall be severally binding upon all and each of the said defendants, and that your orator may have leave to take testimony before a Master in Chancery of this Court at any time after the filing of this bill of complaint.

And that upon final hearing said injunction be made perpetual.

May it please your Honors to grant to your orator a writ of subpœna of the United States of America, issued out of and under the seal of your Honorable Court directed to said defendants and each of them, returnable on a day certain therein named, as by law required, commanding that they and each of them appear and answer this, your orator's, bill of complaint, as hereinbefore set forth.

May your orator have such other and further relief as to equity and good conscience as may be proper in the premises.

And your orator will ever pray.

EDWARD T. PLATT.

By O'BRIEN, BOARDMAN, PLATT & LITTLETON,
His Solicitors.

WALKER D. HINES,
Counsel.

61 THE UNITED STATES OF AMERICA }
Southern District of New York } ss.

On this 10th day of November, 1910, before me personally appeared Edward T. Platt, the above named orator, who made solemn oath that he had read the foregoing bill of complaint subscribed by him and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated to be alleged on information and belief, and that
62 as to those matters he believes it to be true.

Sworn to before me this 10th }
day of November, 1910. }

WILLIAM W. COLLIN, JR.,
(SEAL.) Notary Public,
New York County.

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Exhibit A.

MAYOR'S OFFICE,
Bureau of Licenses,
City Hall,
New York.

LAW DEPARTMENT,
Office of the Corporation Counsel. 66

NEW YORK, December 9, 1902.

GEORGE W. BROWN, JR., ESQ.,
Chief of the Bureau of Licenses.

SIR: I have your letter of November 6th, 1902, in which you ask to be advised in regard to certain questions relative to the licensing of public carts and express wagons.

You ask first if an expressman, having a place of business outside the City of New York and conveying 67 articles from that location to and delivering the same in the City of New York, and also collecting articles for conveyance and delivery outside thereof, requires an express license from the City of New York to do such business as is done therein.

You also ask if an expressman who is licensed elsewhere is exempt from the operation of the municipal ordinances requiring a license here, and cite as a specific example of the case of an expressman with a Jersey City license delivering packages in New York City, 68 or taking packages from New York City for delivery in Jersey City.

You also refer me to the case of the Long Island Express Company, which collects parcels and carries them to some destination beyond the limits of the city.

It is my opinion that the ordinances, Sections 18, 19 and 20, apply to an expressman having a place of business outside The City, and conveying articles

69 to a point within The City, or to a point beyond The City, providing he passes through the corporation.

Section 18 of the ordinances applies to all express vehicles which convey certain articles "within or through" The City.

It is not, in my opinion, necessary that the express business be confined entirely to the territory included within the City, and it is therefore my conclusion that the ordinances apply to the case of the Long Island Express Company. Although no specific charge is
70 imposed for the wagon service of that Company, as distinguished from the car service, a general charge is imposed by the Company for the collection and transportation of express packages, and it is to be presumed that that charge also includes the charge for transportation by wagon, as well as by rail.

In the case of the Jersey City expressman, my conclusion is different. It seems to me that the imposition of a license fee, and the prescription of rates, as far as they apply to an expressman who transports
71 packages or other articles from Jersey City, or from any other point without the State, to the City or through The City, would be an attempt to regulate interstate commerce, and would, therefore, be unauthorized. It has been decided by the Supreme Court of the United States, and by the Court of Appeals of this State, that in the case of interstate transportation the legislature cannot prescribe the charge to be made for even that part of the transportation which is to be performed within the State. Wabash R. R. Co. vs. Ill.,
72 118 U. S., 557. Peo. *ex rel.* Pa. R. R. Co. vs. Knight, 171 N. Y., p. 357.

You also wish to be advised as to whether a vehicle licensed as a public cart is prohibited from doing an express business, and whether a duly licensed express is prohibited from carrying articles which a public cart is allowed to carry.

Section 6, referring to the public carts and cartmen, defines a public cart as "a vehicle used to carry merchandise, household furniture, or other bulky articles"

and no provision is made to compel a public cartman to give a bond. An expressman, under Section 18 is permitted to carry packages, parcels and other articles, and the owner of the express wagon is compelled to give a bond. The distinction between a cartman and an expressman seems to be that an expressman is permitted to carry articles of every nature, whether light or bulky, and is compelled to give a bond, while a public cartman is permitted to carry only articles of a bulky nature, and no bond is required. I believe that an expressman may act as a cartman, but a cartman has no right to act as an expressman.

Respectfully yours,

(Signed) GEORGE L. RIVES,
Corporation Counsel.

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CIRCUIT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

EDWARD T. PLATT, as Treasurer of the United States Express Company, etc.,

Complainant,

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vs.

THE CITY OF NEW YORK, ET AL.,

Defendants.

Answer.
In Equity
No. 6-242.

The joint and several answers of the defendants herein, the City of New York, the Mayor and Commonalty of the City of New York, William J. Gaynor
79 as Mayor of the City of New York, William J. Gaynor, James C. Cropsey as Commissioner of Police of the City of New York, James C. Cropsey, Clement J. Driscoll as Deputy Commissioner and all other deputy commissioners, Max S. Smittberger Chief Inspector and all other inspectors, officers, members, agents, servants and employees of the Department of Police of the City of New York, Francis V. F. Oliver Chief of the Bureau of Licenses of the City of New York, and all agents or employees of said Bureau and all officers,
80 employees, agents and servants of the City of New York, to the bill of complaint herein:

The above named defendants now and at all times hereafter saving and reserving unto themselves and each of them all benefit and advantage of exception which can or may be had or taken to the many uncertainties and insufficiencies in the said bill of complaint contained for answer thereto, or unto so much and such parts thereof as they are

advised is or are material or necessary to make answer unto, answering say: 81

FIRST: Defendants admit all of the allegations contained in paragraphs numbered 1, 2 and 3 of said bill of complaint herein, except that defendants have no knowledge as to the rights, duties and liabilities of said United States Express Company under the acts of Congress, and leave complainant to make such proof thereof as he may be advised.

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SECOND: Defendants have no knowledge as to any of the matters or things alleged in paragraph numbered 4 of said bill of complaint herein and leave complainant to make such proof thereof as he may be advised, except that defendants admit that in carrying on and conducting its said express business in the City of New York said United States Express Company does collect and receive from and deliver to various persons in the City of New York numerous packages and articles of value. 83

THIRD: Defendants admit that the amount involved in this controversy, exclusive of interest and costs, largely exceeds the sum of Two thousand dollars ($2,000).

FOURTH: Defendants admit that statutes and ordinances have been duly enacted by the State of New York and by the Board of Aldermen of the City of New York, respectively, as set forth in paragraph 84 numbered 6 of said bill of complaint herein, but defendants deny that said provisions as set forth in said bill of complaint herein, are a full and complete statement of all of the provisions of said statutes and ordinances applicable and relevant to the matter in controversy herein, a full, true and complete copy of the ordinances of the City of New York, so far as relevant to the matter in controversy herein, will be found in the 1910 edition of Cosby's Code of Ordinances, to which reference is made for greater certainty.

85 Defendants admit that prior to the institution of this suit said United States Express Company operated and employed drivers and wagons within said City of New York without first obtaining the licenses required by said ordinances of said city, but defendants aver that said acts on the part of said United States Express Company were in defiance of said statutes and ordinances hereinbefore referred to and were illegal and criminal acts.

86 FIFTH: Upon information and belief, defendants deny that the City of New York has no authority to make the provisions of said ordinances applicable to wagons or drivers used in carrying on interstate commerce within the city and denies that none of said provisions are valid or binding upon wagons or drivers used and employed in the conduct of interstate commerce within the city, but on the contrary defendants aver that said ordinances are valid local police regulations applicable to all persons within the City of New
87 York falling within their provisions. Defendants admit that a former Corporation Counsel of said City of New York rendered an opinion, a copy of which is attached to the bill and marked Exhibit "A", but defendants deny that the same is relevant or material to any matter in controversy in this suit. Save as herein expressly denied or admitted, defendants have no knowledge of any matter or thing alleged in said paragraph numbered 7 in said bill of complaint and ask that complainant be required to make full proof
88 thereof if the same is deemed material.

SIXTH: Defendants admit that heretofore the defendant William J. Gaynor as Mayor of the City of New York, directed the Department of Police to enforce the provisions of said ordinances relating to the wagons and drivers of said United States Express Company and of all other expressmen doing business within the city, in accordance with the terms of said ordinances, and that defendants purpose and intend to enforce said ordinances in the future. Defendants

admit that the police of said City of New York have arrested one or more drivers of express wagons for driving said wagons through the streets of said city without having first obtained the licenses required by said ordinances. But defendants deny that they have seized and impounded, or threatened to seize and impound, the wagons of said United States Express Company and withdraw them from service in the forwarding of interstate commerce by express in order to enforce the payment of a license tax on said wagons, or for any other purpose, and defendants deny that they purpose or intend so to do in the future, except that defendants intend to prevent the use of unlicensed express wagons within the city and if necessary to that end will remove said unlicensed wagons from the streets of the city to a place of safety until the same can be delivered to the owner thereof. Defendants deny that at the time of said strike referred to in said bill of complaint, or at any other time, the Bureau of Licenses, or any of the employees thereof, refused or delayed in any manner the issuance of licenses duly applied for in accordance with said ordinance. That on the contrary defendants aver that even during said strike licenses applied for were issued with great rapidity and that every effort was made by said Bureau of Licenses to expedite the issuance of said licenses. Defendants aver that now and at all times, licenses properly applied for, may be promptly obtained. Save as hereinabove specifically admitted, denied or otherwise stated, defendants have no knowledge of any of the matters or things alleged in said paragraph numbered 8 of said bill of complaint herein and leave the complainant to make such proof thereof as he may be advised.

SEVENTH: Defendants have no knowledge of any of the matters or things in paragraph numbered 9 of said bill of complaint herein and leave the complainant to make such proof thereof, is deemed material, as he may be advised.

93 EIGHTH: Defendants deny that at the time of said strike, referred to in the bill of complaint herein, or at any other time, the defendants withdrew or threatened to withdraw police protection to said United States Express Company, or its wagons or drivers, as alleged in paragraph numbered 10 of said bill of complaint herein. But defendants admit that they did refuse to furnish to said express company special police escorts to accompany unlicensed wagons and drivers through the streets of the city. Save as herein admitted or denied,
94 or otherwise stated, defendants have no knowledge as to any of the matters alleged in paragraph numbered 10 of said bill of complaint herein and leave the complainant to make such proof, thereof, if deemed material, as he may be advised.

NINTH: Defendants have no knowledge of any of the matters or things alleged in paragraph numbered 11 of said bill of complaint herein and leave the complainant to make such proof thereof
95 as he may be advised, except that they deny that they purpose to, and unless restrained by the order of the court that they will prevent said company from making deliveries of and transporting goods in and through the City of New York. But defendants admit that they purpose and intend to enforce said ordinances in a lawful and orderly manner as hereinbefore stated.

TENTH: Defendants have no knowledge of any of the
96 matters or things alleged in paragraph numbered 12 of said bill of complaint and leave the complainant to make such proof thereof as he may be advised, if deemed material.

ELEVENTH: Defendants deny that they have prevented said United States Express Company from carrying on its said business in the City of New York, or that its said business has been or will be in any way crippled or injured by these defendants, or any of them, or that said United States Express Company

has suffered or will suffer any loss or damage by reason of any acts or threatened acts of these defendants and especially that said United States Express Company has been or will be injured or damaged in the manner alleged in paragraph numbered 13 of said bill of complaint herein.

TWELFTH: Defendants deny that they, or either of them, have in any way trespassed upon the rights of complainant, as alleged in said bill of complaint herein, or otherwise, and deny that complainant is entitled to any relief whatever, or any part of the relief in said bill of complaint demanded, all of which matters and things these defendants are ready and willing to prove as this Honorable Court shall direct and these defendants pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

ARCHIBALD R. WATSON,
Corporation Counsel,
Solicitor for defendants,
Hall of Records,
Borough of Manhattan,
New York City.

(Signed)
WILLIAM B. HALE,
Counsel for defendants,
40 Wall Street,
New York, N. Y.

UNITED STATES OF AMERICA,
State of New York,
CITY AND COUNTY OF NEW YORK, } ss.:

JAMES C. CROPSEY being duly sworn, deposes and says: I am one of the defendants above named. I have read the foregoing answer and know the contents thereof, and the same is true of my own knowledge

except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

(Signed) JAMES C. CROPSEY.

Subscribed and sworn before me on this 4th day of January, 1911.

SAMUEL P. DU BOIS,
Notary Public,
Queens Co.
Cer. Filed.
Reg. No. 2164. N. Y. Co.

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UNITED STATES CIRCUIT COURT,

Southern District of New York.

Edward T. Platt, as Treasurer of the United States Express Company, &c.,

Complainant,

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against

The City of New York, The Mayor and Commonalty of the City of New York, William J. Gaynor, James C. Cropsey, as Commissioner of Police of the City of New York, James C. Cropsey, Clement J. Driscoll, as Deputy Commissioner, and all other Deputy Commissioners, Max F. Schmittberger, Chief Inspector, and all other inspectors, officers, members, agents, servants and employees of the Department of Police of The City of New York, Francis V. F. Oliver, Chief of Bureau of Licenses of The City of New York, and all agents and employees of said Bureau, and all officers, employees, agents and servants of The City of New York,

Defendants.

Replication. In Equity. No. 6-242.

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This replicant, Edward T. Platt, as Treasurer of the United States Express Company, individually and as a shareholder in said Company, suing upon behalf of himself and all other members or shareholders of said

Company, saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of said defendants, for replication thereunto sayeth that he does and will ever maintain and prove his said bill to be true, certain, and sufficient in the law to be answered unto by said defendants, and that the answer of said defendants is very uncertain, evasive, and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things this replicant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly as in and by his said bill he has already prayed.

O'Brien, Boardman, Platt & Littleton,
Solicitors for Complainant.

(Sgd.) Walker D. Hines,
Counsel for Complainant, 52 William Street,
New York City, N. Y.

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CIRCUIT COURT OF THE UNITED STATES.

SOUTHERN DISTRICT OF NEW YORK.

EDWARD T. PLATT, as Treasurer of the United States Express Company, &c., Complainant, AGAINST THE CITY OF NEW YORK, ET AL., Defendants.	Stipulation. In Equity. No. 6-242.

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For the purposes of this cause only, it is hereby stipulated as follows:

The United States Express Company (hereinafter referred to as the "Express Company") carries on its business as an express company over railroads extending through the States of New Jersey, Pennsylvania, New York, Ohio, Indiana, Illinois, Missouri, Kansas, Nebraska, Colorado, South Dakota, Minnesota, Iowa, Wisconsin, Michigan, Delaware, Maryland, Virginia, West Virginia, Tennessee, Alabama, Mississippi, Louisiana, Arkansas, Oklahoma and Texas; the Territory of New Mexico; the District of Columbia; and the Province of Ontario, Canada. The mileage of the railroads so served by the Express Company aggregates over 32,000 miles and includes no railroads in or adjacent to the State of New York except the Central Railroad of New Jersey, the Eastern terminus of which is at Communipaw, New Jersey, the Lehigh Valley Railroad, the Eastern terminus of which is at Jersey City, New Jersey, and the Delaware, Lackawanna & Western Railroad, the Eastern terminus of which is at Hoboken, New Jersey. The Express Company's Eastern rail termini are at the Central Railroad of New Jersey terminal at Communipaw, the

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Lehigh Valley Railroad terminal at Jersey City, and the Delaware, Lackawanna & Western Railroad terminal at Hoboken, New Jersey, respectively. All express matter carried by the Express Company between New York City and points west of New York City is carried by its express wagons between New York City and Communipaw, or Jersey City, or Hoboken, as the case may be, such wagons crossing the Hudson River on ferry boats, and the Express Company has no arrangements or connection which will admit of such express matter being carried in any other way.

About three-tenths of one per cent. of the total business done by the Express Company in the conduct of its express business in New York City consists of shipments carried by it between points in New York City (*i. e.*, between points on Staten Island, in the Borough of Richmond, without going out of the State).

About one and two-tenths of the total business done by the Express Company in the conduct of its express business in New York City consists of shipments carried in its wagons by it between points in the Borough of Richmond and points in other Boroughs of New York City. All such shipments are carried on ferry boats between the Borough of Richmond and the Borough of Manhattan, and said ferry boats pass out of the State of New York through the waters of the State of New Jersey in their transit between said Boroughs of Manhattan and Richmond.

A small but substantial part of the total business handled by the Express Company in the conduct of its express business in New York City represents shipments carried by it between New York City and other points in the State of New York, all of which are carried by the Express Company across the Hudson River between New York City and Jersey City in its wagons as aforesaid and then over the Delaware, Lackawanna and Western Railroad or the Lehigh Valley Railroad through the States of New Jersey and Pennsylvania; and the Express Company has no arrangements or connections which

will admit of such traffic being carried in any other way. 121

All the Express Company's business as an Express Company in New York City other than that referred to in the last three preceding paragraphs consists of the transportation of articles, each of which is received by the Express Company for shipment at a point in one State or a foreign country and is carried by the Express Company to a point of destination in another State or foreign country. A portion of the business mentioned in this paragraph consists of the transportation of goods carried daily by the Express Company pursuant to the laws of the United States in bond from one port of entry to another, for all of which goods the Express Company is under bond to the United States to carry safely and deliver to the Collector of the Port at destination. Another portion of the business mentioned in this paragraph consists of transportation, under contract with the United States, of large shipments of currency of great value in each direction between the United States Treasury in Washington City in the District of Columbia and New York City, in the State of New York and other cities in the United States; in many instances such shipments of currency exceed $1,000,000 each in value. All of the shipments mentioned in this paragraph are carried by the Express Company in its wagons across the Hudson River between New York City, New York, and Jersey City, New Jersey. 122 123

For the conduct of its aforesaid business in New York City the Express Company has 276 two-horse express wagons, and 67 one-horse express wagons, of which 189 are stabled in and operated exclusively from Jersey City, 123 are stabled in and operated exclusively from Communipaw, and 31 are stabled in and operated in the Borough of Manhattan. But all of said wagons are operated indiscriminately in the handling of the Express Company's interstate, foreign and local traffic in the manner hereinbefore stated. 124

The Express Company has never taken out from the authorities of the City of New York any licenses

125 for its express wagons or for the drivers thereof, but during many years has operated substantially the number of wagons above set forth.

The facts above set forth are true at the present time, and have been true for many years past and at all times since the filing of the bill herein.

Except as so far as otherwise hereinbefore specifically stipulated, the facts in this cause are substantially the same as the facts in the suit now pending in this Court of William M. Barrett, as President of
126 Adams Express Company, &c., complainant, against City of New York, *et al.*, defendants; and a copy of the testimony and other evidence taken and stipulations made before the Examiner in said last mentioned suit shall be filed herein and treated as pertinent to this cause as fully as if said evidence had been taken and said stipulations had been made in this cause and had related expressly to the United States Express Company, instead of to the Adams Express Company.

This cause shall be heard and determined upon this
127 stipulation and upon the testimony and other evidence and stipulations in said last mentioned suit, and no further evidence shall be taken herein.

Dated March 17th, 1911.

O'BRIEN, BOARDMAN, PLATT & LITTLETON,
Solicitors for Complainant.

ARCHIBALD R. WATSON,
Solicitor for Defendants.

WILLIAM B. HALE,
Counsel for Defendant.

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CIRCUIT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK,

EDWARD T. PLATT, as Treasurer of the United States Express Company, &c.,

Complainant,

AGAINST

THE CITY OF NEW YORK, ET AL.,

Defendants.

Stipulation.

In Equity No. 6-242.

130

It is hereby stipulated that only the pleadings and the stipulation of March 17, 1911, and this stipulation need be printed in this cause; and that, to the extent provided in said stipulation of March 17, 1911, the 131
parties may use in this court, without reprinting, the testimony and other evidence and stipulations in the suit of William M. Barrett, as President of the Adams Express Company, etc. v. The City of New York, *et al.* as already printed in said suit, and that an order to this effect may be entered without further notice.

Dated New York, March 18, 1911.

O'BRIEN, BOARDMAN, PLATT & LITTLETON,
Solicitors for Complainant.

ARCHIBALD R. WATSON, 132
Per H.,
Solicitor for Defendants.

Opinion.

United States Circuit Court, Southern District of New York.

WILLIAM M. BARRETT, as President of the Adams Express Company, Complainant,

vs.

THE CITY OF NEW YORK and Others, Defendants.

EDWARD T. PLATT, as Treasurer of the United States Express Company, Complainant,

vs.

THE CITY OF NEW YORK and Others, Defendants.

WELLS, FARGO & COMPANY, Complainant,

vs.

THE CITY OF NEW YORK and Others, Defendants.

This cause comes here upon final hearing of bill in equity to restrain the enforcement of certain ordinances passed by the Board of Aldermen of the City of New York.

Opinion.

LACOMBE, *C. J.*:

These ordinances were fully discussed in the opinion filed in disposing of the motions for preliminary injunction in these three suits. 183 F. R., 793. Much testimony has been taken but it merely establishes by competent proof what the court assumed to be the facts when the former decision was made. Neither the new proofs nor the exhaustive briefs which are now presented have induced the court to reach a different conclusion upon the main features of the case from that already expressed.

It may be taken for granted that when the group of ordinances contained in Chapter 7 were enacted,—if they were enacted as a single piece of legislation, which we may assume to have been the fact—the Board of Aldermen had primarily in mind the licensing and otherwise regulating certain specified businesses included in the enumeration of Sec. 51 of the Greater New York Charter. It is difficult to see how any one can read the first two sections without reaching this conclusion. Sec. 305 provides that "the following businesses must be duly licensed, as herein provided;" and Sec. 306 provides that "no person shall engage in or carry on any such business without a license thereof," under certain specified penalties.

"Expressmen" are included in the enumeration of Sec. 305, but it is abundantly settled by authority that a person engaged in conducting an interstate express cannot be required by the local or state authorities to take out a local license as a prerequisite to conducting such interstate business in such locality.

Complainant, therefore, is entitled to an injunction restraining defendants from taking any action to enforce complainant's compliance with the provisions of these two ordinances.

Incidentally as part of the local legislation embodied in this chapter of the ordinances, regulations as to the use of the streets were adopted. They provide, among other things, that wagons used in express business shall be licensed and marked with the word "express" and their official numbers and shall be regularly inspected by city inspectors, a license fee of $5 being charged for each wagon. It is further provided that the drivers of each of such wagons shall be licensed upon certificate as to competency, shall exhibit their official licenses on demand and shall report any change of residence to the Bureau of Licenses. A license fee of fifty cents is required for each driver. The court has no doubt that it was within the power of the Board of Aldermen to prescribe such regulations, and believing these provisions to be clearly separable from those which regulate generally the doing of an express business (Willcox v. Consolidated Gas Co.), must decline to interfere with their enforcement for reasons sufficiently set forth in the former opinion. The amount of license fee charged is so small that it may fairly be considered merely as providing for the cost of oversight and inspection.

It is also thought that the provision (Sec. 322) requiring a bond to be given for each licensed vehicle in the penal sum of $100 conditioned for the safe and prompt delivery of all baggage, packages, parcels and other articles is a legitimate exercise of the police power, which is not — be condemned because it affects interstate commerce.

When the cause was considered on the application for preliminary injunction the use of automobiles by one of these express companies was not discussed. It now appears that the Adams Express Company operates upwards of 90 automobiles; the drivers of these are chauffeurs. The state has itself taken charge of the regulation of these high power machines in public thoroughfares; the vehicles themselves and the chauffeurs are licensed by the state. Chapter 374 of the Laws of 1910 provides that "local authorities shall have no power to pass, enforce or maintain any ordinance, rule or regulation requiring from any owner or chauffeur, to whom this article is applicable, any tax, fee, license or permit for the use of the public highways, or excluding any such owner or chauffeur from the free use of such public highways * * *, and no ordinance, rule or regulation contrary to, or in any wise inconsistent with the provisions of this article, now in force or hereafter enacted, shall have any effect."

These express company automobiles and chauffeurs have been duly licensed by the state. It is not quite clear whether or not defendants are seeking to require additional licenses for such vehicles and drivers to be taken out under the ordinances; but, if they are doing so injunction may issue covering all such vehicles and drivers as hold state licenses.

Let a decree be entered in accordance with the views above expressed.

United States Circuit Court, Southern District of New York.

WILLIAM M. BARRETT, as President of Adams Express Co.,
v.
THE CITY OF NEW YORK and Others.

EDWARD T. PLATT, as Treasurer of United States Express Co.,
v.
THE CITY OF NEW YORK and Others.

WELLS, FARGO & COMPANY
v.
THE CITY OF NEW YORK and Others.

These are three suits, brought each by a separate express company to restrain the City of New York and various public officers therein from seeking to compel the Complainants and their drivers to take out licenses and pay license fees under certain ordinances of the City of New York, on the ground that complainant companies and their drivers are engaged in interstate commerce as common carriers regulated by the Interstate Commerce Act. The situation of each company is substantially the same as that of the others, and the discussion of the cases will be simplified if it be confined to the facts shown in the case first above entitled. The ordinances in controversy will be found in Chapter 7, Titles 1, 2, 3, and 4 of the Code of Ordinances of the City of New York. (Edition 1910): such of them as are germain to the issues here involved are referred to in the opinion and the full text of the more important sections is reproduced either in the opinion or in a foot-note.

LACOMBE, *C. J.*:

The fairness and conciseness with which the questions at issue have been presented on the briefs, and the frankness with which each side has conceded what is the result of reported decisions bearing upon the general subject-matter of the discussion has greatly lightened the labor of the court, and has made it unnecessary to undertake any extended review of those authorities: practically there is no dispute as to the law of the case.

The express company takes packages of merchandise coming from other states at some railroad or steamer terminal and transports them by its wagons through the streets and avenues to the addresses of the several consignees. It also collects similar packages addressed to consignees in other states, from shippers here and in like manner transports them to such terminals to be forwarded to their respective addresses. It is conceded that the local part of this transportation is an incident of the entire transportation and that such transportation is interstate commerce. The company also transports to and from points within this city packages not coming from or addressed to points without this state. It is conceded that so much of its business is not interstate commerce.

The amount of this domestic business is relatively very small, averaging less than one per cent. of its interstate business; with the interstate business only is this court concerned and in this discussion it will be assumed preliminarily at least that there is no intrastate business to be considered.

Not only is the local transportation of interstate packages interstate commerce, and so within the exclusive jurisdiction of the Federal Government, but that Government has actually taken control and regulated such business by express detailed provisions and by giving to the Interstate Commerce Commission very broad powers of regulation. See the Interstate Commerce Act as amended June 29th, 1906, and June 18th, 1910.

In the course of conducting such business, it is necessary for the express company to make use of the public streets, as a thoroughfare for the passage of the wagons it propels under guidance of its drivers, such wagons becoming a part of the traffic in those streets. That the local authorities have full power, under reasonable regulations, to regulate such traffic is not disputed. The Greater New York Charter, Section 50 grants to the Board of Aldermen power to regulate by general ordinances the use of the streets and sidewalks by foot passengers, animals and vehicles, to regulate the speed of vehicles; to make all such regulations in reference to the running of stages, trucks and cars as may be necessary for the convenient use and accommodation of the streets, etc., etc.

It is conceded by Complainants that the circumstance that their wagons, when using the public streets, are engaged in interstate commerce does not make them immune from the operation of such general ordinances, even though the exigencies of traffic in a congested centre of population may induce a very liberal interpretation of this grant of power. The local authorities may find it necessary not only to adopt and enforce "rules of the road," but also to prescribe regulations as to size and weight of vehicles, as to the details of their construction (such as tire width relative to weight), as to their motive power, as to identifying marks and numbers, as to the qualifications of their drivers, as to registration and licensing of vehicles and drivers, as to inspection and oversight. There is no reason and the court knows of no authority which will exempt the instruments of interstate commerce from regulations of this sort, adopted for the public safety and convenience, with which other vehicles not engaged in such commerce must comply. It is a legitimate exercise of the police power reserved to the States. Complainants make no contention to the contrary; indeed they fully concede the proposition above set forth. It is understood further, that they concede that such fees or charges as may be ratably imposed on all in order to provide the machinery necessary to carry out such regulations cannot fairly be regarded as a tax on interstate commerce, any more than would be the tolls upon a turnpike.

On the other hand, it is conceded by counsel for the defendants that whatever authority may be given by law to the local legislature to regulate business generally or to regulate the business of certain specified classes of persons, qua business, is inoperative to control a person engaged in interstate commerce, whose business is already

regulated by federal law, since the business of such person is within the exclusive jurisdiction of Congress.

With these concessions in mind we may now turn to the specific ordinances in controversy. The Greater New York Charter, Section 51, provides:

"SEC. 51. Subject to the constitution and laws of the State, the board of aldermen shall have power to provide for the licensing and otherwise regulating the business of dirt carts, public cartmen, truckmen, hackmen, cabmen, expressmen, car-drivers and boatmen; of boot-blacks, of pawnbrokers, junk-dealers, keepers of intelligence offices, dealers in second-hand articles, hawkers, peddlers, vendors and scalpers in coal freights; of menageries, circuses and common shows; of bone boiling, fat rendering, and other noxious businesses; and shall have power to regulate or forbid the keeping of dogs. The board of aldermen shall also have power to regulate the rates of fares to be taken by owners or drivers of hackney coaches, carriages, motors, automobiles or other vehicles, and to compel the owners thereof to pay annual license fees. All ordinances in relation to any of the matters mentioned in this section shall be general, shall provide for the enforcement thereof in the manner specified in section '44' of this act as amended, and shall fix the license fees to be paid, if any. All licenses shall be according to an established form, and shall be regularly numbered and duly registered as shall be prescribed by the board of aldermen."

The Code of Ordinances contains a group of provisions apparently framed under the authority conferred by this section, dealing with the granting and regulation of licenses, and being Chapter 7 of such Code.

A Bureau of Licenses is established and organized, (Title 1, secs. 300-304), it being provided that all licenses issued by such bureau shall show, among other things, the "privileges allowed." It is next provided in sec. 305 that: "The following businesses must be duly licensed as herein provided, namely, public cartmen, truckmen, hackmen, cabmen, expressmen, drivers, junk dealers, dealers in second-hand articles, hawkers, peddlers, vendors, ticket speculators, coal scalpers, common shows, shooting galleries, bowling alleys, billiard tables, dirt carts, exterior hoists and stands within stoop lines and under the elevated railroad stations." A penalty of not less than $2, nor more than $25, for each offense is imposed upon any person "who shall engage in or carry on any such business without a license therefor," sec. 306. The term of the license and its suspension or revocation are provided for in sec. 307, and the amount of annual license fees is provided in Sec. 308 (printed in foot-note infra) a separate fee is charged for each cart, hack, or express wagon, which is a convenient method of making the tax imposed conform to the amount of business done, there being in like manner a separate fee charged for each table in a billiard room and for each chair in a boot-black stand. Renewals of licenses are provided for in sec. 309.

The next article, 3 (sec. 310-360) deals with special regulations and rates. Under the first three subdivisions sec. 310-329 are

grouped "Public Carts and Cartmen" and "Public Hacks and Hackmen." A "public cart" is defined by sec. 310 as "Every vehicle of whatever construction, drawn by animal power or propelled by other motive power, which shall be kept for hire or used to carry merchandise, household furniture, or other bulky articles within the City of New York for pay." The owner thereof is declared to be a "public cartman." There is no separate provision in the Code for "truckmen," enumerated in sec. 51 of the Charter and in sec. 306 of the Ordinances: evidently it was assumed that there was no real distinction to be drawn between a cart and a truck. It is provided that every public cart shall show on each outside thereof identifying marks and an official number (sec. 311); and that the amount to be charged for loading, transportation and unloading may be agreed upon in advance, and such contract shall control (sec. 312). The legal rates "for moving household furniture," unless otherwise mutually agreed are prescribed in sec. 313 (printed in the footnote); but there seems to be no prescribed rates for articles not properly "household furniture." To secure payment of his "legal rate of transportation," a public cartman is given a lien, and provision made as to enforcing it (sec. 314).

Sec. 315 provides that: "Every person driving a licensed hack or express, other than the person named in the license therefor, shall be licensed as such driver, and every application for such license shall be indorsed, in writing, by two reputable residents of The City of New York, certifying to the competence of the applicant."

Subdivision 3 and 4 (sec. 316-329) regulate "Public Hacks and Hackmen," the word "hacks" including "cabs" and "coaches" for transporting persons, and the term "hackmen" including owner or driver, or both (sec. 316). There are provisions as to backstands and the use thereof. The legal rates of fare for cabs and coaches, both mileage and hourly, are specifically fixed, with right to exact payment in advance. We find provisions for marking and numbering the vehicles, for the disposition of property lost or left therein, and for the settlement of disputes as to the lawful rate of fare, where no agreement has been made.

Sec. 325 provides that "All vehicles for hire shall be licensed, and the owner thereof shall pay the sum of two dollars with his original application as the license fee for each and every vehicle so kept for hire and one dollar for each vehicle for annual renewals." It is difficult to see to what "vehicles for hire" this can apply, in view of the specific provisions as to "public carts," "public hacks" and "public expresses" found elsewhere in the Chapter. Possibly it may apply to vehicles supplied to customers by livery stables.

Subdivision 4*a*. (sec. 329*a* to 329*k*) deals with Public Porters, requiring licenses and the wearing of a badge, and regulating the manner in which they shall conduct their business, and the rates they may charge.

Subdivision 5 deals with Expresses and Expressmen. It reads as follows:

SEC. 330. Every vehicle of whatever construction kept or used for the conveyance of baggage, packages, parcels and other articles

within or through The City of New York for pay, shall be deemed a public express, and the owner thereof shall be deemed a public expressman, and the term expressman shall be deemed to include any common carrier of baggage packages, parcels or other articles within or through The City of New York.

SEC. 331. Every public express shall show on each outside thereof the word "Express," or the letters "Exp.," together with the figures of its official number.

SEC. 332. Every owner of a public express shall give a bond to The City of New York for each and every vehicle licensed in a penal sum of $100 with sufficient surety, approved by the Mayor or Chief of the Bureau of Licenses, conditioned for the safe and prompt delivery of all baggage, packages, parcels and other articles or things entrusted to the owner or driver of any such licensed express.

SEC. 333. The legal rates for regular deliveries, unless otherwise mutually agreed, shall be as follows in the city:

Between points within any borough:	
Not more than five miles apart, each piece	$0.40
Not more than ten miles apart, each piece	.55
Not more than fifteen miles apart, each piece	.75

Between points in different boroughs: One-half the above rates in addition.

Special deliveries at rates to be mutually agreed upon.

In Subdivisions 6 to 16 (secs. 334-359) are found provisions regulating in more or less detail the following businesses: Junk Dealers, Dealers in Second-Hand Articles, Peddlers, Ticket Speculators, Coal Scalpers, Common Shows, Shooting Galleries, Bowling Alleys, Billiard Tables, Dirt Carts and Cartmen and exterior hoists. Article 4 deals with stands within the Stoop Lines and under Elevated Railroad Stations.

Title 3 (Sec-. 373-378) deals with General Regulations and Complaints, License fees received from hackmen, dealers in junk and second-hand articles and for stands within stoop-lines are to be paid into the Sinking Fund and all other license fees into the City Treasury. All licensed vehicles and places of business shall be regularly inspected. Sec. 374 (printed in the foot-note). Licenses must be exhibited on demand; the identifying marks prescribed for licensed vehicles are to be permanently and conspicuously affixed; fines of not more than $5 may be imposed by the Chief of the Bureau of Licenses. Further penalties for violation of the regulations are provided in section 379, printed in the foot-note. A few preliminary points which have been raised may be first disposed of. It has been suggested that the form, arrangement and language of the group of ordinances above cited indicate that the Board of Aldermen which passed them was undertaking to exercise the power conferred by section 51, and was not acting under section 50 of the Charter. This may be so, but it is not material to enquire into the mental processes of the members of a past and gone legislative body. If some one or more of its enactments are such as it had authority to

pass under some specific grant of power, it will not fail because it was voted for under the supposition that authority was given under some different grant of power, not broad enough to warrant such enactment.

It is shown that for years past and with these ordinances in the Code the express company has not (until just prior to the bringing of this suit) been required to take out licenses for the conduct of its interstate business, or to employ only licensed drivers for its wagons engaged in interstate commerce, or to conform to any tariff charges prescribed, nor has there ever been any inspection of its premises or vehicles.

It has, however, taken out licenses for wagons and drivers engaged in conducting its intrastate business. This indicates a practical construction of the ordinances in consonance with complainants' interpretation of them, which might help to turn the scales in a doubtful case but which certainly cannot control, if some particular ordinance is found to be valid and applicable.

This discussion is much simplified by the manner in which it comes up. The application is for a preliminary injunction. Such relief is not granted unless it is apparent that some irreparable damage to the complainant will result if is postponed till final hearing. As to nearly all the provisions complained of no such damage is shown. The amounts of license fees prescribed for wagons and drivers may be paid under protest, without inconvenience, and no irreparable damage will result from filing the bonds required; no harm will result from marking the wagons with their license numbers, or from allowing the city officials to inspect premises or vehicles. No attempt has been made to regulate the rates to be charged and collected for transportation of interstate packages, nor is any such attempt threatened. The defendants concede that where such rates are not disapproved by the Interstate Commerce Commission the City authorities have nothing to do with them.

It does appear, however, that if the provisions requiring all express wagons to be driven only by drivers licensed as required by sec. 315 are enforced, the ability of the express company to discharge its duties as a common carrier engaged in interstate commerce may be seriously interfered with. A determination, therefore, of the questions raised as to this section is appropriate at this stage of the case.

That section requires that the drivers of certain vehicles therein specified must be licensed, which is calculated to ensure their identification, and that their application for license must be accompanied by a certificate in writing by two reputable residents "to the competence of the applicant," which to some extent—however slight—would tend to secure more careful drivers. If this ordinance were enacted under sec. 50 of the Charter and by its terms applied to all persons driving vehicles in the streets Complainants, on their own statement, would not be here asserting immunity from its provisions. As we have seen it makes no difference under which section of the Charter the Board of Aldermen undertook to act; if the ordinance is such as they were authorized to enact under any section, and they

have enacted it, it will stand. The only question is whether the particular ordinance is so special that it must fall, either because it is not a "general ordinance" which alone are authorized by sec. 50, or because it makes discriminations not to be tolerated under the Fourteenth Amendment to the Constitution of the United States.

Obviously the ordinance is not of universal application; it does not require the drivers of all vehicles to be licensed after a certification as to competency. No doubt it would be a great boon to pedestrians who have to use the streets if such a measure of protection against reckless driving were secured to them, but this ordinance does not go to any such length. It deals only with a relatively small class of drivers. As we have seen the only carts which are required to be licensed are those used by their owners to transport the goods of other persons for pay (sec. 310). Inasmuch as all licensed vehicles are required to be conspicuously marked, a few hours' walk through the business thoroughfares of the city will give some idea of the relatively small number of vehicles which are within the terms of the ordinances. All carts and trucks used by wholesale dealers, by building contractors, breweries, department stores and in a host of other employments—some of them of larger size and a greater menace than any operated by public cartmen or expressmen—are wholly without the purview of this ordinance.

It may be that the class covered by this ordinance is still further restricted. The ordinance is limited in terms to "every person driving a licensed hack or express." By definition (Sec-. 310-316) the "public cartmen" whose vehicles must be licensed *is* operating neither a hack nor an express, so that sec. 315 does not require the person driving his vehicle to be licensed. Sec. 308 provides that the annual license fee for each driver of any licensed vehicle shall be fifty cents; but that may fairly be construed as prescribing only the amount which shall be paid by drivers who are required to be licensed; what drivers shall be licensed being provided for elsewhere. If this construction be correct, the only drivers of carts for the conveyance of goods who are required to be licensed are those who drive express wagons; the drivers of the public carts of "public cartmen" are immune. Such a construction, however, is somewhat doubtful, and since no such interpretation is contended for by the complainants, it will be assumed for the purposes of this case that sec. 315 requires licensed drivers for all public hacks and for all carts or wagons whose owners carry articles owned by others for pay.

This class which includes the truckmen, cartmen, expressmen and hackmen, is apparently a small one, relatively to the total traffic in the streets; but it is not a class arbitrarily constituted, the line of cleavage between it and the residue of the traffic carried on by owners of the vehicles transporting their property and persons is a natural one. It is quite conceivable that some good reason may be shown for a separate classification; it is suggested on defendant's brief that the drivers of the one class are readily differentiated from those of the other classes by the circumstance that they name the charges for service to customers, collect the amounts due and may contract in some instances for special rates. However this may be

the federal courts are not astute to find improper classification where the state has undertaken, in the exercise of its police power, to differentiate between different classes. There must be a very clear showing of inequality, (as in Yick Wo v. Hopkins, 118 U. S. 356) to warrant their interposition. In the case at bar this court is not now prepared to hold that the discrimination between the drivers provided for in sec. 315 and all other drivers is so arbitrary as to require the condemnation of the section under the Fourteenth Amendment. As to the suggestion that Chap. 50 of the Charter forbids the passage of special ordinances, it is sufficient to say that an ordinance covering all instances of a certain class may be a "general" one although it may not be universally applicable to all classes.

It is further suggested that the section should be condemned because it leaves the question, who shall be licensed, to the arbitrary and unqualified discretion of the Mayor, who may revoke any driver's license at his own will, without assigning any reasons for such action, sec. 307. A similar objection was raised before this court in Engel v. O'Malley (opinion filed Aug. 31, 1910, not yet reported). There a statute was criticized because it apparently confided the issuing of a license to the arbitrary discretion of the State Comptroller. Of this criticism it was said: "it is sufficient to say that the terms (of the Statute) may be construed either way; that is, as giving such officer the power capriciously to refuse a license, or as giving him the power to refuse only in the honest exercise of a reasonable discretion. In the absence of a decision by the State Court of last resort construing the language of the Statute, it must be assumed that the latter is the correct interpretation, because otherwise the act would be unconstitutional and it must be assumed that the legislature intended to keep its enactments within the limits fixed by the Constitution."

The motions are denied.

Foot-Note.

The following sections of the Ordinances, which are cited in the foregoing opinion, are printed in full in this foot-note, for convenience of reference:

"Sec. 308. The annual license fees shall be as below enumerated:

For each public cart or truck	$2.00
For each public hack coach	3.00
For each public hack cab	2.00
For each special hack coach	5.00
For each special hack cab	3.00
For each express wagon	5.00
For each junk shop or dealer	20.00
For each dealer in second-hand articles	25.00
For each junk cart or boat	5.00
For each peddler using horse and wagon	8.00
For each peddler using push cart	4.00
For each peddler carrying merchandise	2.00

For each ticket speculator	50.00
For each coal scalper	250.00
For each common show	25.00
For each public shooting gallery	5.00
For each public bowling alley	5.00
For each public billiard table	3.00
For each dirt cart	1.00
For each general hoisting	25.00
For each special hoisting	1.00
For each fruit or soda water stand, or both	10.00
For each newspaper or periodical stand, or both, and in addition also fruit or soda water, or both	15.00
For each movable newsaper stand	1.00
For each newspaper and periodical stand, or both	5.00
For each chair of a bootblack stand	5.00
For each stand under elevated railroad stations	10.00
For each driver of any licensed vehicle	0.50

SEC. 313. The legal rates for moving household furniture, unless otherwise mutually agreed, shall be as follows:

For a single truck load, within two miles	$2.00
For every additional truck load, within two miles	0.50
For loading, and unloading and housing to ground floor	.50
For each flight of stairs, up or down	.25
For double truck load, within two miles	3.00
For every additional mile or part thereof	1.00
For loading, unloading and housing to ground floor	.50
For every flight of stairs, up or down	.50

SEC. 374. The mayor shall have power to appoint inspectors in the Bureau of Licenses to see that the provisions of this ordinance are fully and properly complied with; and all licensed vehicles and places of business shall be regularly inspected, and the result of such inspection shall be indorsed on the official license therefor, together with the date of inspection and the signature of the inspector, and all inspections shall be regularly reported to the Bureau of Licenses.

SEC. 379. Except as hereinbefore otherwise provided, no person shall violate any of the regulations of this ordinance under a penalty of not less than two dollars or more than ten dollars for each offense. No such violation shall be continued under a penalty of one dollar for each day so continued. Any person engaging in or carrying on any business herein regulated without a license therefor, or any person violating any of the regulations of this ordinance, shall be deemed guilty of a misdemeanor, and upon conviction thereof by any magistrate, either upon confession of the party or competent testimony, may be fined not more than two dollars ($2) for each offense, and in default of payment of such fine may be committed to prison by such magistrate until the same be paid; but such imprisonment shall not exceed ten days."

(Endorsed:) U. S. Circuit Court, Southern District N. Y. Filed Dec. 22, 1910. John A. Shields, Clerk.

United States Circuit Court, Southern District of New York.

WILLIAM M. BARRETT, as President of the Adams Express Company, Complainant,

vs.

THE CITY OF NEW YORK and Others, Defendants.

EDWARD T. PLATT, as Treasurer of the United States Express Company, Complainant,

vs.

THE SAME, Defendant.

WELLS, FARGO & COMPANY, Complainant,

v.

THE SAME, Defendant.

This cause comes here upon final hearing of bill in equity to restrain the enforcement of certain ordinances passed by the Board of Aldermen of the City of New York.

LACOMBE, *C. J.*:

These ordinances were fully discussed in the opinion filed in disposing of the motions for preliminary injunction in these three suits. 183 F. R. 793. Much testimony has been taken but it merely establishes by competent proof what the court assumed to be the facts when the former decision was made. Neither the new proof nor the exhaustive briefs which are now presented have induced the court to reach a different conclusion upon the main features of the case from that already expressed.

It may be taken for granted that when the group of Ordinances contained in Chapter 7 were enacted.—if they were enacted as a single piece of legislation, which we may assume to have been the fact—the Board of Aldermen had primarily in mind the licensing and otherwise regulating certain specified businesses included in the enumeration of Sec. 51 of the Greater New York Charter. It is difficult to see how any one can read the first two sections without reaching this conclusion. Sec. 305 provides that "the following businesses must be duly licensed, as herein provided;" and Sec. 306 provides that "no person shall engage in or carry on any such business without a license thereof" under certain specified penalties.

"Expressmen" are included in the enumeration of Sec. 305, but it is abundantly settled by authority that a person engaged in conducting an interstate express cannot be required by the local or state authorities to take out a local license as a prerequisite to conducting such interstate business in such locality.

Complainant, therefore, is entitled to an injunction restraining defendants from taking any action to enforce complainant's compliance with the provisions of these two ordinances.

Incidentally as part of the local legislation embodied in this chapter of the Ordinances, regulations as to the use of the streets were adopted. They provide, among other things, that wagons used in express business shall be licensed and marked with the word "express" and their official numbers and shall be regularly inspected by city inspectors, a license fee of $5. being charged for each wagon. It is further provided that the drivers of each of such wagons shall be licensed upon certificate as to competency, shall exhibit their official licenses on demand and shall report any change of residence to the Bureau of Licenses. A license fee of fifty cents is required for each driver. The Court has no doubt that it was within the power of the Board of Aldermen to prescribe such regulations, and believing these provisions to be clearly separable from those which regulate generally the doing of an express business (Willcox v. Consolidated Gas Co.) must decline to interfere with their enforcement for reasons sufficiently set forth in the former opinion. The amount of license fee charged is so small that it may fairly be considered merely as providing for the cost of oversight and inspection.

It is also thought that the provision (Sec. 322) requiring a bond to be given for each licensed vehicle in the penal sum of $100. conditioned for the safe and prompt delivery of all baggage, packages, parcels and other articles is a legitimate exercise of the police power, which is not to be condemned because it affects interstate commerce.

When the cause was considered on the application for preliminary injunction the use of automobiles by one of these express companies was not discussed. It now appears that the Adams Express Company operates upwards of 90 automobiles; the drivers of these are chauffeurs. The state has itself taken charge of the regulation of these high-powered machines in public thoroughfares; the vehicles themselves and the chauffeurs are licensed by the State. Chapter 374 of the Laws of 1910 provides that "local authorities shall have no power to pass, enforce or maintain any ordinance, rule or regulation requiring from any owner or chauffeur, to whom this article is applicable, any tax, fee, license or permit for the use of the public highways, or excluding any such owner or chauffeur from the free use of such public highways—and no ordinance, rule or regulation contrary to, or in any wise inconsistent with the provisions of this article, now in force or hereafter enacted, shall have any effect."

These express company automobiles and chauffeurs have been duly licensed by the State. It is not quite clear whether or not defendants are seeking to require additional licenses for such vehicles and drivers to be taken out under the ordinances; but, if they are doing so injunction may issue covering all such vehicles and drivers as hold state licenses.

Let a decree be entered in accordance with the views above expressed.

(Endorsed:) U. S. Circuit Court, Southern District N. Y. Filed Jun- 20, 1911. John A. Shields, Clerk.

At a Stated Term of the Circuit Court of the United States of America for the Southern District of New York, in the Second Judicial Circuit, Held at the United States Court Rooms in the Borough of Manhattan, on the 29 Day of June, 1911.

Present:

Hon. E. H. Lacombe, Circuit Judge.

EDWARD T. PLATT, as Treasurer of the United States Express Company, as a Shareholder and Member Thereof, Suing on Behalf of Himself and All Members and Shareholders of said Company, Complainant,

v.

THE CITY OF NEW YORK, THE MAYOR AND COMMONALTY OF THE City of New York, William J. Gaynor, as Mayor of the City of New York; William J. Gaynor; James C. Cropsy, as Commissioner of Police of the City of New York; James C. Cropsy; Clement J. Driscoll, as Deputy Commissioner, and All Other Deputy Commissioners; Max F. Smittberger, Chief Inspector, and All Other Inspectors, Officers, Members, Agents, and Servants and Employees of the Department of Police of the City of New York; Francis V. F. Oliver, Chief of the Bureau of Licenses of the City of New York, and All Agents or Employees of said Bureau, and All Officers, Employees, Agents, and Servants of the City of New York, Defendants.

Final Decree.

This cause having come on for final hearing upon the bill of complaint, the answer thereto, the replication, and the proofs oral and documentary duly taken and filed herein,

Now, therefore, upon consideration thereof, and after hearing Walker D. Hines, of counsel for Complainant, in support of the bill, and William B. Hale, of counsel for defendants, in opposition thereto, and due deliberation having been had, it is

Ordered, adjudged and decreed:

First. That Sections 305 and 306 of Chapter 7 of the Code of Ordinances of the City of New York are inoperative and void as an interference with interstate commerce, so far as they purport to require complainant herein to take out a local license as a prerequisite to conducting its interstate express business in the City of New York, and that a writ of injunction issue herein perpetually enjoining and restraining the defendants herein, and each of them, from taking any action to compel complainant to take out such a license under said sections.

Second. That Sections 308, 315, 330, 331, 332, 374, 375 and 376 of Chapter 7 of the Code of Ordinances of the State of New York, so far as they provide that wagons used in the express business shall be licensed and marked with the word "Express," or the letters "Exp.," together with their official number, and shall be regularly inspected by city inspectors, and that a license fee of

Five Dollars ($5) shall be paid for each wagon, and that the drivers of each of said wagons shall be licensed upon a certificate as to competency, and shall exhibit their official licenses on demand, and report any change of residence to the Bureau of Licenses, and that a license fee of Fifty (50) cents shall be paid for each driver, and that a bond shall be given for each licensed vehicle in the penal sum of One Hundred Dollars ($100) conditioned for the safe and prompt delivery of all baggage, packages, parcels and other articles entrusted to the owner or driver of said licensed vehicles, are valid enactments and not an unlawful interference with interstate commerce, and that an injunction restraining the enforcement of said sections of said ordinance against the complainant be, and the same is hereby, denied.

Third. That said city ordinances so far as they require automobiles used in the express business, and the drivers or chauffeurs thereof, to be licensed are inconsistent with and superseded by Chapter 374 of the Laws of 1910 of the State of New York, and that a writ of injunction issue herein perpetually enjoining and restraining defendants, and each of them, from in any manner requiring additional licenses to be taken out under said ordinances for such express automobiles and chauffeurs as hold licenses from the State of New York.

Fourth. That no costs be recovered by either party as against the other.

Enter:

E. HENRY LACOMBE,
Circuit Judge.

(Endorsed:) Copy Received Jun- 24, 1911. Cravath, Henderson & de Gersdorff, Attorneys for Complainant. U. S. Circuit Court. Filed Jun- 30, 1911. John A. Shields, Clerk.

Circuit Court of the United States for the Southern District of New York.

Equity. 6–242.

EDWARD T. PLATT, as Treasurer of the United States Express Company, an Unincorporated Association of More Than Seven Members, Organized and Existing under the Laws of the State of New York, Complainant,

against

THE CITY OF NEW YORK, WILLIAM J. GAYNOR, Individually and as Mayor of the City of New York; James C. Cropsey, Individually and as Commissioner of Police of the City of New York; Clement J. Driscoll, as Deputy Commissioner; Max F. Schmittberger, Chief Inspector, and All Other Inspectors, Officers, Members, Agents, Servants, and Employees of the Department of Police of Police of the City of New York; Francis V. S. Oliver, Chief of the Bureau of Licenses of The City of New York, and All Agents or Employees of said Bureau, and All Officials, Members, Agents, and Servants of The City of New York, Defendants.

Petition for Allowance of Appeal.

Now comes the complainant above-named by O'Brien, Boardman & Platt, his solicitors, and prays for the allowance of an appeal to the Supreme Court of the United States from so much and such part and from each and every part of the final decree of this Court made herein on the 29th day of June, 1911, and entered on the 30th day of June, 1911, as denies him the relief prayed for in the bill of complaint filed herein, for the reasons specified in his assignment of errors which is filed herewith; and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be presented to the Supreme Court of the United States.

Dated, New York, July 29, 1911.

O'BRIEN, BOARDMAN & PLATT,
Solicitors for Complainant.

WALKER D. HINES,
Of Counsel.

The foregoing petition for appeal is allowed.
Dated, New York, August 3rd, 1911.

H. G. WARD,
Circuit Judge.

(Endorsed:) Due and timely service of a copy of the within is hereby admitted. Dated New York, Aug. 3rd, 1911. A. R. Watson and W. B. Hall, Solicitors for Defendants.—U. S. Circuit Court, Southern District N. Y. Filed Aug. 3, 1911. John A Shields, Clerk.

Circuit Court of the United States for the Southern District of New York.

Equity. No. 6-242.

EDWARD T. PLATT, as Treasurer of the United States Express Company, an Unincorporated Association of More Than Seven Members, Organized and Existing under the Laws of the State of New York, Complainant,

against

THE CITY OF NEW YORK, WILLIAM J. GAYNOR, Individually and as Mayor of the City of New York; James C. Cropsey, Individually and as Commissioner of Police of the City of New York; Clement J. Driscoll, as Deputy Commissioner; Max F. Schmittberger, Chief Inspector, and All Other Inspectors, Officers, Members, Agents, Servants, and Employees of the Department of Police of the City of New York; Francis V. S. Oliver, Chief of the Bureau of Licenses of The City of New York, and All Agents or Employees of said Bureau, and All Officials, Members, Agents, and Servants of The City of New York, Defendants.

Assignment of Errors.

Now comes the above named complainant by O'Brien, Boardman & Platt, his solicitors, and files the following assignment of errors upon which he will rely upon his appeal from the final decree herein entered in the office of the Clerk of this court on the 30th day of June, 1911.

First. The court erred in denying the complainant a perpetual injunction restraining the enforcement of sections 308, 315, 330, 331, 332, 374, 375 and 376 of Chapter 7 of the Code of Ordinances of the City of New York.

Second. The court erred in refusing to hold that said sections of the ordinance when construed in connection with the other sections of the ordinance do not apply to Express Companies doing an interstate business except to the extent that said Express Companies perform a strictly local service in New York City and its immediate vicinity.

Third. The court erred in refusing to hold that said sections of the ordinance if construed to apply to Express Companies doing an interstate business except to the extent that the said Express Companies perform a strictly local service in New York City and its immediate vicinity, are not authorized by section 51 of the Charter of The City of New York.

Fourth. The court erred in refusing to hold that said sections of the ordinance as applied to Express Companies doing an interstate business are unconstitutional and void as an interference with interstate commerce in violation of the provisions contained in section 8 of Article I of the Constitution of the United States.

Fifth. The court erred in holding that said sections of the ordinance are severable from sections 305 and 306 of the same chapter

of the said Code of Ordinances of The City of New York which it held unconstitutional and void as an attempt to regulate and interfere with interstate commerce in violation of the provisions contained in section 8 of Article I of the Constitution of the United States.

Sixth. The court erred in refusing to hold that so much of section 379 of the Code of Ordinances of The City of New York as provides that any person engaging in or carrying on the Express business without a license therefor shall be guilty of a misdemeanor, is as applied to express companies doing an interstate business unconstitutional and void as an interference with interstate commerce in volation of the provisions contained in section 8 of Article I of the Constitution of the United States.

Seventh. The court erred in refusing to hold that sections 305, 306, 307, 308, 315, 330, 331, 332, 333, 373, 374, 375, 376, 378 and 379 of Chapter 7 of the Code of Ordinances of the City of New York as applied to express companies doing an interstate business constitute a single and inseparable scheme of municipal legislation, whereby it is sought to regulate and interfere with the interstate business of the express companies, and as such are wholly unconstitutional and void because an interference with interstate commerce in violation of the provisions contained in section 8 of Article I of the Constitution of the United States.

Eighth. The court erred in refusing to hold that sections 308, 315 and 374 of Chapter 7 of the Code of Ordinances of The City of New York constitute an arbitrary and unlawful discrimination against express companies, deny to them the equal protection of the laws and deprive them of their property without due process of law in violation of the provisions contained in the Fourteenth Article of Amendment to the Constitution of the United States.

Wherefore complainant prays that said decree of the Circuit Court in so far as it denies the complainant an injunction restraining the enforcement of the aforesaid sections of the Code of Ordinances of The City of New York be reversed.

Dated, New York, July 29, 1911.

O'BRIEN, BOARDMAN & PLATT,
Solicitors for Complainant.

WALKER D. HINES, *Counsel.*

(Endorsed:) U. S. Circuit Court, Southern District N. Y. Filed Aug. 3, 1911. John A. Shields, Clerk.

Bond.

NOTE.—On August 3, 1911, the Complainant filed a bond in the sum of $250.00 for damages and costs on appeal and said Bond was approved by Judge Ward.

THE UNITED STATES OF AMERICA, *ss:*

To The City of New York, William J. Gaynor, Individually and as Mayor of the City of New York, James C. Cropsey, Individually and as Commissioner of Police of The City of New York; Clement J. Driscoll, as Deputy Commissioner; Max F. Schmittberger, Chief Inspector, and All Other Inspectors, Officers, Members, Agents, Servants and Employees of the Department of Police of The City of New York; Francis V. S. Oliver, Chief of the Bureau of Licenses of The City of New York, and All Agents or Employees of said Bureau, and All Officials, members, Agents and Servants of The City of New York, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, to be holden in the City of Washington, District of Columbia, on the 28th day of August, 1911, next, pursuant to an appeal, duly allowed by the Circuit Court of the United States for the Southern District of New York, and filed in the Clerk's office of said court on the 3rd day of August, 1911, in a cause wherein Edward T. Platt, as Treasurer of the United States Express Company, an unincorporated association of more than seven members, organized and existing under the Laws of the State of New York, is the appellant, and you are the appellees, to show cause, if any there be, why the decree in so far as rendered against the said appellant as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Given under my hand at the Borough of Manhattan, in the City of New York, in the District and Circuit above named, this 3rd day of August, in the year of our Lord one thousand nine hundred and eleven, and of the Independence of the United States the one hundred and thirty-sixth.

H. G. WARD,
Judge of the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

[Endorsed:] Eq. 6/242. E. & A. D. 3290. Circuit Court of the United States for the Southern District of New York. Edward T. Platt, as Treasurer, etc., Complainant, against The City of New York et al., Defendants. Citation on Appeal. O'Brien, Boardman & Platt, Solicitors of Complainant, Attorneys for —— ——, Office and Post-Affice Address, Two Rector Street, New York City. Due and timely service of a copy of the within is hereby admitted. Dated New York, August 3rd, 1911. A. R. Watson and W. B. Hale, Sols. & Counsel for D'f'ts, Solicitor- for defendants. U. S. Circuit Court, Southern District, N. Y. Filed Aug. 3, 1911. John A. Shields, Clerk.

Circuit Court of the United States for the Southern District of New York.

EDWARD T. PLATT, as Treasurer of the United States Express Company, Suing on Behalf of Himself and All Other Members and Shareholders of said Company, Complainant,

against

THE CITY OF NEW YORK, THE MAYOR AND COMMONALTY OF THE City of New York, William J. Gaynor, as Mayor of the City of New York; William J. Gaynor; James C. Cropsey, as Commissioner of Police of the City of New York; James C. Cropsey; Clement J. Driscoll, as Deputy Commissioner, and All Other Deputy Commissioners; Max F. Smittberger, Chief Inspector, and All Other Inspectors, Officers, Members, Agents, and Servants and Employees of the Department of Police of the City of New York; Francis V. F. Oliver, Chief of the Bureau of Licenses of the City of New York, and All Agents or Employees of said Bureau, and All Officers, Employees, Agents, and Servants of the City of New York, Defendants.

Petition for Appeal and Allowance Thereof.

The above named defendants conceiving themselves aggrieved by the final decree herein, dated the 29th day of June, 1911, and entered in the office of the clerk of said court on the 30th day of June, 1911, in the above entitled cause hereby appeal from said decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors, which is filed herewith, and pray that their said appeal may be allowed and that the bond on appeal presented herewith may be approved and that a citation issue, directed to the above named complainant, commanding him to be and appear before the said Supreme Court of the United States upon the return day thereof, and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be transmitted to said Supreme Court of the United States and that upon the filing of said appeal bond all further proceedings in this court be suspended until the determination of said appeal by said Supreme Court of the United States, to the end that said decree of this court may be reversed and such decree made as to said Supreme Court of the United States may seem just.

Dated, New York, August 3rd, 1911.

WILLIAM B. HALE,
Counsel for Defendants-Appellants,
40 Wall Street, New York, N. Y.

Appeal allowed and ordered accordingly.
Dated, New York, August 3, 1911.

H. G. WARD,
Circuit Judge.

(Endorsed:) Service of the within Petition and Allowance is hereby admitted. Dated New York, Aug. 3rd, 1911. O'Brien, Boardman & Platt, Solicitors for Compl't.—U. S. Circuit Court, Southern District N. Y. Filed Aug. 4, 1911. John A. Shields, Clerk.

Circuit Court of the United States for the Southern District of New York.

EDWARD T. PLATT, as Treasurer of the United States Express Company, Suing on Behalf of Himself and All Other Members and Shareholders of said Company, Complainant,

against

THE CITY OF NEW YORK. THE MAYOR AND COMMONALTY OF THE City of New York, William J. Gaynor, as Mayor of the City of New York; William J. Gaynor; James C. Cropsey, as Commissioner of Police of the City of New York; James C. Cropsey; Clement J. Driscoll, as Deputy Commissioner, and All Other Deputy Commissioners; Max F. Smittberger, Chief Inspector, and All Other Inspectors, Officers, Members, Agents, and Servants and Employees of the Department of Police of the City of New York; Francis V. F. Oliver, Chief of the Bureau of Licenses of the City of New York, and All Agents or Employees of said Bureau, and All Officers, Employees, Agents, and Servants of the City of New York, Defendants.

Assignment of Errors.

Now come the above named defendants and appellants herein and say that in the record and proceedings of said court herein, and in the decree made herein and dated the 29th day of June, 1911, and entered in the office of the clerk of said court on the 30th day of June, 1911, there is manifest error in this, to-wit:

First. That the court erred in finding and decreeing that Sections 305 and 306 of Chapter 7 of the Code of Ordinances of the City of New York are inoperative and void as an interference with interstate commerce to any extent, and in enjoining the defendants herein from taking any action to compel complainant to take out a license under said sections, instead of construing said sections in connection with the other sections of the same ordinance, held valid by the court, and as so construed upholding said Sections 305 and 306 as valid and constitutional enactments.

Second. That the court erred in construing said ordinances as purporting to require of the complainant a local license as a pre-requisite to conducting an interstate express business in the City of New York.

Third. That the court erred in granting an injunction restraining defendants from compelling complainant to take out a local license as a pre-requisite to conducting an interstate express business in the City of New York, because it appears without contradic-

tion that defendants have never attempted or threatened to require such a license and claim no right to require such a license.

Fourth. That the court erred in holding and decreeing that said Code of Ordinances of the City of New York so far as they require automobiles used in the express business, and the drivers or chauffeurs thereof to be licensed, are inconsistent with and superseded by Chapter 374 of the Laws of 1910 of the State of New York, and in granting an injunction restraining defendants from in any manner requiring additional licenses to be taken out under said ordinances for such express automobiles and chauffeurs as hold licenses from the State of New York.

Fifth. That the court erred in granting any relief against the defendants.

Sixth. That the court erred in not dismissing the bill of complaint for want of equity.

Seventh. That the court erred in not dismissing the bill of complaint upon the merits, with costs.

Wherefore, defendants and appellants pray that the said decree of the said Circuit Court of the United States for the Southern District of New York, for the errors aforesaid, be reversed and that the said court be instructed to enter a decree dismissing the bill of complaint herein upon the merits and for such other relief as may be just.

Dated, New York, August 3rd, 1911.

WILLIAM B. HALE,
Counsel for Defendants-App'l'ts,
40 *Wall Street, New York, N. Y.*

(Endorsed:) Service of the within Assignment of Errors is hereby admitted. Dated New York, Aug. 3rd, 1911. O'Brien, Boardman & Platt, Solicitors for Compl't.—U. S. Circuit Court, Southern District N. Y. Filed Aug. 4, 1911. John A. Shields, Clerk.

Bond.

NOTE.—On August 4, 1911, the Defendants filed a Bond in the sum of $250.00 for damages and costs on appeal and said Bond was approved by Judge Ward.

THE UNITED STATES OF AMERICA, *ss:*

To Edward T. Platt, as Treasurer of the United States Express Company, suing on behalf of himself and all other members and shareholders of said company, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States to be held in the City of Washington, District of Columbia, on the 28th day of August, 1911, next, pursuant to an appeal, duly allowed by the Circuit Court of the United States for the Southern District of New York, and filed in the Clerk's office of said Court on the 3rd day of August, in a

cause wherein the City of New York, and Mayor and Commonalty of the City of New York, William J. Gaynor, as Mayor of the City of New York, William J. Gaynor, James C. Cropsey, as Commissioner of Police of the City of New York, James C. Cropsey, Clement J. Driscoll, as Deputy Commissioner and all other deputy commissioners, Max F. Smittberger, Chief Inspector and all other Inspectors, officers, members, agents and servants and employees of the Department of Police of the City of New York, Francis V. F. Oliver, Chief of the Bureau of Licenses of the City of New York, and all agents or employees of said bureau, and all officers, employees, agents and servants of the City of New York, are the appellants, and you are the appellee, to show cause, if any there be, why the decree in so far as rendered against the said appellants as in said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Given under my hand at the Borough of Manhattan, in the City of New York, in the District and Circuit above named, this 3rd day of August, in the Year of our Lord, One thousand nine hundred and eleven, and of the independence of the United States the One hundred and thirty-sixth.

H. G. WARD,
Circuit Judge for the Southern District of New York.

[Endorsed:] Eq. 6/242. Circuit Court of the United States for the Southern District of New York. Edward T. Platt, as Treasurer of United States Express Company, etc., Complainant, against The City of New York et als., Defendants. Citation on appeal. William B. Hale, Counsel for D'f'd'nts-App'l'nts, 40 Wall Street, Borough of Manhattan, New York City. Due and timely service of a copy of the within is hereby admitted this 3rd day of August, 1911. Service of the within Citation is hereby admitted. Dated, New York, Aug. 3rd, 1911. O'Brien, Boardman & Platt, Solicitors for Compl't. U. S. Circuit Court, Southern District, N. Y. Filed Aug. 4, 1911. John A. Shields, Clerk.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Shields, Clerk of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, do hereby certify, that the foregoing pages, numbered from one to seventy-nine inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the cause entitled, Edward T. Platt, as Treasurer of the United States Express Company, an unincorporated association of more than seven members, organized and existing under the Laws of the State of New York, Complainant-Appellant, against The City of New York, William J. Gaynor, individually and as Mayor of the City of New York, James C. Cropsey, individually and as Commissioner of Police of the City of New York, Clement J. Driscoll, as Deputy Commissioner, Max F. Schmittberger, Chief Inspector, and all other in-

spectors, officers, members, agents, servants and employees of the Department of Police of the City of New York, Francis V. S. Oliver, Chief of the Bureau of Licenses of The City of New York, and all agents or employees of said Bureau, and all officials, members, agents and servants of The City of New York, Defendants-Appellees, and Edward T. Platt, as Treasurer of United States Express Company, suing on behalf of himself and all other members and shareholders of said Company, Complainant-Appellee, against The City of New York, The Mayor and Commonalty of the City of New York, William J. Gaynor, as Mayor of the City of New York, William J. Gaynor, James C. Cropsey, as Commissioner of Police of the City of New York, James C. Cropsey, Clement J. Driscoll, as Deputy Commissioner and all other Deputy Commissioners, Max F. Schmittberger, Chief Inspector and all other Inspectors, Officers, members, agents and servants and employees of the Department of Police of the City of New York Francis V. F. Oliver, Chief of the Bureau of Licenses of the City of New York, and all agents or employees of said bureau and all officers, employees, agents and servants of the City of New York, Defendants-Appellants, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 14th day of August, in the year of our Lord one thousand nine hundred and eleven, and of the Independence of the said United States the One Hundred and Thirty-sixth.

[Seal of U. S. Circuit Court, South. Dist. New York.]

JOHN A. SHIELDS, *Clerk*.

[Endorsed:] United States Supreme Court. Edward T. Platt, as Treasurer of the United States Express Company, etc., Compl't-Appellant, vs. The City of New York et al., Def'ts-Appellants. Edward T. Platt, as Treasurer of *of* United States Express Co., etc., Compl't-Appellee, vs. The City of New York et al., Def'ts-Appellants. Transcript of Record. Appeal from the Circuit Court of the United States for the Southern District of New York.

Endorsed on cover: File No. 22,842. S. New York C. C. U. S. Term No. 766. Edward T. Platt, as treasurer of the United States Express Company, &c., appellant, vs. The City of New York et al. File No. 22,843. Term No. 767. The City of New York et al., appellants, vs. Edward T. Platt, as treasurer of the United States Express Company, &c. Filed August 19, 1911. File Nos. 22,842 & 22,843.

Supreme Court of the United States.

October Term, 1911.

The City of New York, *et al.*, Appellants, *against* William M. Barrett, as President of the Adams Express Company, etc.	No. 84.

Brief of Appellants.

Appellants, defendants in the Court below, likewise appeal from the Decree for the reasons, as specified in their Assignments of Error,

First—That the Court erred in finding and decreeing that sections 305 and 306 of chapter 7 of the Code of Ordinances of The City of New York are inoperative and void, as an interference with interstate commerce to any extent, and in enjoining the defendants herein from taking any action to compel complainants to take out a license under said sections, instead of construing said sections in connection with the other sections of the same Ordinance, held valid by the Court, and, as so construed, upholding said sections 305 and 306 as valid and constitutional enactments.

Second—That the Court erred in construing said Ordinances as purporting to require of the complainant a local license as a prerequisite to conducting an interstate express business in The City of New York.

Third—That the Court erred in granting an injunction restraining defendants from compelling complainant to take out a local license as a prerequisite to conducting an interstate express business in The City of New York, because it appears without contradiction that defendants have never attempted or threatened to require such a license and claim no right to require such a license.

Fourth—That the Court erred in holding and decreeing that said Code of Ordinances of The City of New York, so far as they require automobiles used in the express business and the drivers or chauffeurs thereof to be licensed, are inconsistent with and superseded by chapter 374 of the Laws of 1910 of the State of New York, and in granting an injunction restraining defendants from in any manner requiring additional licenses to be taken out under said Ordinances for such express automobiles and chauffeurs as hold licenses from the State of New York.

Fifth—And that the Court erred in granting any relief against the defendants, in not dismissing the bill of complaint for want of equity and in not dismissing it upon its merits.

Assignment of Errors, p. 192.

All of the necessary facts are set forth in our Brief in

Barrett *vs.* City of New York, No. 83.

argued and submitted herewith.

In support of their appeal the defendants urge the following:

POINTS.

I.

Sections 305 and 306 of the Code of Ordinances of The City of New York do not require the complainant to take out local licenses as a condition precedent to engaging in interstate express business.

These sections provide as follows:

> "Sec. 305. The following businesses must be "duly licensed as herein provided, namely, "public cartmen, truckmen, hackmen, cabmen, "*express men*, drivers, junk dealers, dealers in "second-hand articles, hawkers, pedlers, "venders, ticket speculators, coal scalpers, "common shows, shooting galleries, bowling "alleys, billiard tables, dirt carts, exterior "hoists and stands within stoop lines and "under the stairs of the elevated railroad sta- "tions.
>
> "Sec. 306. No person shall engage in or "carry on any such business without a license "therefor under a penalty of not less than "two dollars, nor more than twenty-five dol- "lars for each offense, and for the purposes of "this ordinance the term person shall include "any human being or lawful association of "such."

There is not the slightest reference to interstate commerce or an interstate business in either of these two sections. And why the learned Court below should have ruled that these two sections

> "are inoperative and void as an interference "with interstate commerce, so far as they pur-

"port to require complainant herein to take
"out a local license as a prerequisite to con-
"ducting its interstate express business in The
"City of New York,"

is something which we are unable to appreciate.

Final Decree, page 185.

From our point of view it makes no difference whether or not complainant is engaged in an interstate business. We do not pretend to interfere with that business nor attempt to regulate it. What we do say is that no person shall engage in the express business within the territorial limits of The City of New York unless and until he has been duly licensed.

If these Ordinances are within the legislative power of the City, as concededly they are, and if they are a valid exercise of its police power, as undoubtedly they are, then admittedly, under the doctrine enunciated by this Court in the

Minnesota Rate Cases, 230 U. S., 352, 402,

these Ordinances are not inoperative and void but are valid and binding.

II.

The Ordinances referred to, in so far as they require automobiles used in the express business, and the drivers or chauffeurs thereof to be licensed, are not inconsistent with, nor are they superseded by chapter 374 of the Laws of 1910 of the State of New York.

The statute in question is a general act and, as it provides (section 280), is exclusively controlling

> "1. Upon the registration, numbering and "regulation of motor vehicles, and the licens- "ing and the regulation of chauffeurs;
>
> "2. On their use of the public highways, "and
>
> "3. On the accessories used upon motor ve- "hicles and their incidents and the speed of "motor vehicles upon the public highways;
>
> "4. On the punishment for the violation "of any of the provisions of this article."

Section 288, which is entitled "*Local ordinances prohibited,*" provides, in part, that

> "Except as herein otherwise provided, local "authorities shall have no power to pass, en- "force or maintain any ordinance, rule or "regulation requiring from any owner or "chauffeur to whom this article is applicable "any tax, fee, license or permit *for the use of* "*the public highway,* or excluding any such "owner or chauffeur from the free use of such "public highway, excepting such driveway,

"speedway or road as has been or may be ex-
"pressly set apart by law for the exclusive
"use of horses and light carriages or in any
"other way respecting motor vehicles or their
"speed upon or use of the public highways;
"and no ordinance, rule or regulations con-
"trary to or in anywise inconsistent with the
"provisions of this article, now in force or
"hereafter enacted, shall have any effect; pro-
"vided, however, that the power given to local
"authorities to regulate vehicles offered to
"the public for hire, and processions, assem-
"blages or parades in the streets or public
"places, and all ordinances, rules and regula-
"tions which may have been or which may be
"enacted in pursuance of such powers shall
"remain in full force and effect; * * *"

In other words, this statute applies exclusively to the licensing and regulation of chauffeurs, etc. The City of New York could not compel a chauffeur to take out an additional chauffeur's license. But in those businesses, over which it can exercise control, it may compel any person who engages in one of those particular lines of business, to take out a license, and it can also provide that that particular business should be subject to certain local regulations. It is not the chauffeur who is again required to be licensed but the person, whether he be chauffeur or not, who engages in the express business. And that person is required to take out not an additional chauffeur's license but an express license. The distinction appears to be too obvious to require comment.

The same proposition was urged by the plaintiffs in the

Yellow Taxicab Co. *vs.* Gaynor, 82 Misc., 94; 143 N. Y. Supp., 279.

It was there claimed that The City of New York, in view of the passage of chapter 374 of the Laws of 1910, could not compel the chauffeur of a motor-driven vehicle, which was being used for public hacking purposes, to take out a hackman's license. But, needless to add, the Court gave it scant consideration.

III.

In view of the fact that the defendants made no claim that the taking out of a local express license was a condition precedent to the complainant's engaging in an interstate express business, there was nothing before the Court to decide.

Equity, under such circumstances, should not have assumed jurisdiction. The defendants did nothing which was either the subject of complaint or the cause of any grievance on the complainant's part. We submit, therefore, that it was error to refuse to dismiss the bill of complaint against the defendants.

IV.

So much of the Decree as awards any relief to the complainant against the defendants should be reversed, and the Bill of Complaint should be dismissed.

Dated New York, November 3, 1913.

Respectfully submitted,

ARCHIBALD R. WATSON,
Corporation Counsel,
Attorney for Appellants.

ARCHIBALD R. WATSON,
TERENCE FARLEY,
of Counsel.

FILED
NOV 10 1913
JAMES D. MAHER
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1913.

Nos. 83 and 84.

WILLIAM M. BARRETT, as President of the Adams Express Company, etc.,
Appellant,

v.

THE CITY OF NEW YORK, *et al.*,
Appellees.

THE CITY OF NEW YORK, *et al.*,
Appellants,

v.

WILLIAM M. BARRETT, as President of the Adams Express Company, etc.
Appellee.

CROSS APPEALS FROM THE UNITED STATES CIRCUIT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF ON BEHALF OF THE ADAMS EXPRESS COMPANY.

NOVEMBER, 1913.

WILLIAM D. GUTHRIE,
Counsel for Adams Express Company.

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Supreme Court of the United States.

OCTOBER TERM, 1913. Nos. 83 and 84.

WILLIAM M. BARRETT, as President of the Adams Express Company, etc.,

Appellant,

v.

THE CITY OF NEW YORK, *et al.*,

Appellees.

THE CITY OF NEW YORK, *et al.*

Appellants,

v.

WILLIAM M. BARRETT, as President of the Adams Express Company, etc.,

Appellee.

CROSS APPEALS FROM THE UNITED STATES CIRCUIT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF ON BEHALF OF THE ADAMS EXPRESS COMPANY.

STATEMENT.

This controversy comes before the court on cross appeals from a decree on final hearing of a suit in equity brought to restrain the enforcement against the Adams Express Company, an interstate carrier, of an ordinance of the board of aldermen of the City of New York, requiring licenses and license bonds, upon the ground that such ordinance, if applicable to interstate express companies, (1) constitutes an unlawful interference with the right to carry on interstate commerce, (2) conflicts with the provisions of an act of Congress regulating the business of interstate express carriers, and (3) denies to express

companies the equal protection of the laws. The learned court below held that part of the ordinance was unconstitutional because plainly an attempted regulation of interstate commerce, but that the part requiring a license for every vehicle and payment of a license fee for every driver and vehicle and the giving of a bond for every vehicle used in the interstate express business were separable from the provisions which regulated the carrying on of the express business and were valid as local police regulations of the use of the public streets (record p. 184).

The ordinance constitutes chapter VII of part I of the Code of Ordinances of New York (Cosby's edition, 1910), and its pertinent provisions are set forth in paragraph VII of the bill of complaint (fols. 19–29; see also appendix to this brief). It provides that a number of businesses, including that of expressmen, shall be licensed (sec. 305), that no person under pain of a penalty shall engage in any such business without a license (sec. 306), that the Mayor shall have power to grant a license only to a citizen of the United States or one who has declared his intention to become a citizen, with power to suspend and revoke such licenses and punish violations thereof (sec. 307), that certain annual license fees shall be paid into the treasury of the City, and among others, $5 for each express wagon and 50 cents for each driver of any licensed vehicle (sec. 308), that every driver of a licensed vehicle shall be licensed, and that his application for a license shall be endorsed by two residents of the City testifying to his competence (sec. 315), that "every vehicle of whatever construction" used for the conveyance of packages and parcels within or through the City

of New York shall be deemed a public express, and its owner and every common carrier shall be deemed a public expressman (sec. 330), that every public express shall be marked with the word "Express" or "Exp." and with its official number (sec. 331), that every owner of a public express shall give a bond of $100 to the City of New York for each vehicle, conditioned for the safe and prompt delivery of property entrusted to the expressman (sec. 332), that the legal rates for carriage, in the absence of an agreement, shall be according to a table specified in the ordinance (sec. 333), that the Mayor shall have power to appoint license inspectors who shall regularly inspect licensed vehicles and places of business in order to see that the ordinance is complied with (sec. 374), that licensees shall exhibit their licenses upon demand, report any changes of residence or place of business, and perform the public duties of the business licensed (sec. 375), that various penalties shall be imposed for violations of the ordinance, and that any person engaging in or carrying on any business regulated by the ordinance without a license may be fined or imprisoned (sec. 379). Of these provisions, sections 305 and 306 were declared unconstitutional by the learned court below because affecting the business of interstate express companies, but the remaining sections, which merely effectuated the intent of these two fundamental sections, were adjudged to be valid.

The Adams Express Company is an unincorporated association organized under the laws of the State of New York, and William M. Barrett, the appellant in No. 83 and appellee in No. 84, is its President (fols. 5, 64, 94). The association is composed of many members, all jointly

interested in the present controversy, but they were not joined as parties below because their large number rendered such a course impracticable (fols. 6, 64). The statutes of the State of New York authorize such an association to sue and to be sued in the name of its president. Code of Civil Procedure, section 1919. The defendants, the Mayor and Police Commissioner of the City, were the municipal officers charged by law with the enforcement of the ordinance (fols. 8, 54). The ground of the jurisdiction of the court below, as a federal court, was that the suit arose under the Constitution and laws of the United States.

For nearly sixty years, since 1854, the Adams Express Company has been engaged in interstate commerce in New York City and elsewhere as a common carrier of packages and parcels (fols. 8, 64, 65, 97, 98).* The Express Company ordinarily collects shipments at the places of busi-

* The nature of the express business and its leading characteristics have been judicially declared in *The Express Cases*, 117 U. S. 1, 30, as follows:

"I am of opinion that what is known as the express business is a branch of the carrying trade that has, by the necessities of commerce and the usages of those engaged in transportation, become known and recognized.

"While it is not possible to give a definition in terms which will embrace all classes of articles usually so carried, and to define it with a precision of words of exclusion, the general character of the business is sufficiently known and recognized to require the court to take notice of it as distinct from the transportation of the large mass of freight usually carried on steamboats and railroads.

"The object of this express business is to carry small and valuable packages rapidly, in such a manner as not to subject them to the danger of loss and damage, which, to a greater or less degree, attends the transportation of heavy or bulky articles of commerce, as grain, flour, iron, ordinary merchandise, and the like.

"It has become law and usage, and is one of the necessities of this business, that these packages should be in the immediate charge of an agent or messenger of the person or company engaged in it."

ness and houses of shippers (fols. 187, 188, 191, 192), transports them on fast passenger trains (fols. 150, 209), transfers them to its wagons on arrival (fols. 208, 291), and makes delivery to the consignees at their places of business or residences by use of such wagons (fols. 153, 154, 177, 178, 181). Promptness and speed are essential to the conduct of the express business (fols. 150, 210, 211, 291). The collection, transportation and delivery of packages follow each other in immediate succession and are all parts of the one continuous service (fols. 219, 290, 291). The company does not at any stage of its business interrupt the course of shipments by storage in a warehouse (fol. 290), nor has it facilities for warehousing goods (fol. 289). From the time a package is received by the company and until delivered to the consignee, it remains in the personal charge of one of its employees whether a driver of the wagon collecting or delivering it, or a messenger on a train (fols. 100, 101). As a high degree of honesty and care in the handling of the property entrusted to an express company is requisite, as well as knowledge of the schedules of rates and charges, the employees of the company, before being hired, must be and are carefully investigated (fols. 116, 354, 355, 357, 412–414) and bonded by the surety department of the company (fol. 508, *et seq.*).

The Adams Express Company daily receives directly from shippers in the City of New York thousands of packages for delivery to consignees in other states, and daily receives in other states thousands of packages for delivery to consignees in the City of New York (fols. 10, 65, 110). The average number of interstate shipments handled in the City is at least 50,000 daily (fol. 110), varying with

the seasons (fol. 110) and being the largest around Christmas (fol. 111). These packages contain money, gold, bullion, jewels, merchandise, documents, perishable goods, etc. (fols. 136–138, 140–144, 147–149, 151). The value of the merchandise carried cannot be estimated (fols. 134, 135) for the reason that a large portion of it is carried under an agreed valuation of $50 per shipment (fol. 135). The company at times carries hundreds of thousands of dollars in bullion (fol. 140), and millions in money (fol. 141). Sixty per cent. of the total bulk of the inbound matter handled by it in the City of New York consists of food and perishable freight (fol. 148), which requires the fastest possible transportation (fol. 149). The company also carries money for the Government of the United States between the City of New York and all points within the territory over which it operates (fol. 147). It transports these packages to and from the City of New York under through bills of lading which it issues in each case as the contract of carriage (fol. 219, exhibits 6, 7, 8), and it charges an indivisible through rate covering all services from receipt until actual delivery to the consignee, no separate charge being made for cartage, collection or delivery, or other terminal services (fols. 154, 155, 219).

The Adams Express Company operates in thirty states and in the District of Columbia, and over 94 railroad lines with a mileage of 32,994 miles, 13 electric lines with a mileage of 245 miles, 20 steamboat lines with a mileage of 3,304 miles and 15 stage and wagon lines with a mileage of 73 miles (fols. 101–107; exhibit 4, fol. 450). It employs 18,038 men, of whom 2,026 are employed in the New York department (fols. 111–112, 452, 453). This

department consists of New York City and Jersey City, the number of men employed in New York greatly exceeding the number employed in Jersey City (fols. 194, 367, 368). The company uses 341 wagons and 68 automobiles in connection with its business in the City of New York (fol. 507), and about half of its wagons are stabled in Jersey City (fols. 119, 507). In connection with these vehicles, the company employs 835 men as drivers, helpers and third men (fols. 351, 352, 507). These men and vehicles are indispensable instrumentalities of the company in the conduct of its interstate business (fols. 17, 66). The plant, wagons, facilities and real estate owned and used by the company represent an investment of the actual present value of $7,000,000 (fol. 114).

All shipments handled by the Adams Express Company between the City of New York and points north, south and west are made by way of Jersey City over interstate railroads running through the State of New Jersey and other states (fol. 176). These shipments are carried in wagons to and from the railroads, the wagons being ferried between New York and Jersey City (fols. 175-177.) Interstate shipments from the City of New York to points reached by way of Jersey City are collected by the company's wagons, carried to its district offices, there transferred to other wagons and then ferried to Jersey City, where the shipments are loaded on trains and carried to their respective destinations (fols. 175-177). Such of the shipments from other states through Jersey City as are addressed to consignees in the City of New York south of 59th Street are delivered directly to the consignees in wagons which are loaded in

Jersey City and ferried across the Hudson River from Jersey City, without further transfer and without being mingled with any articles carried wholly within the City or State of New York (fols. 177, 178). Shipments which come from Jersey City and which are consigned to addresses north of 59th Street in the City of New York are ferried from Jersey City, taken to district offices of the company, there assorted and transferred to other wagons, and then delivered to the consignees (fols. 178, 179).

Interstate shipments consigned to points east of the City of New York are transported by the New York, New Haven and Hartford Railroad Company and loaded on the cars of that road from the Express Company's wagons (fols. 181, 182). Shipments arriving over this railroad are transferred from the railroad cars to the company's wagons at the Grand Central Depot (fols. 179, 180), and those addressed to consignees below 59th Street are delivered directly and without further transfer (fol. 180), and those addressed to consignees above 59th Street are transferred to other wagons for delivery (fol. 213).

For the convenience of its interstate customers, and as an auxiliary to its interstate business, the Adams Express Company receives packages for transportation wholly within the City of New York (including the various boroughs), and also for transportation between the City and eight or ten points on the New York, New Haven and Hartford Railroad in the State of New York (fols. 122-124, 129). These intrastate shipments represent about one per cent. of the total business of the

company (fol. 121). The wagons of the company collect intrastate and interstate packages indiscriminately, and both species of business are carried on in the same manner and with the same instrumentalities (fols. 128, 132-134). No attempt is made to segregate the intrastate traffic from the interstate traffic, and such segregation would be impracticable because of the expense (fol. 134). The intrastate business of the company is so small that, if it were carried on separately, it would involve an expenditure far in excess of all that that branch of the business earns or can earn (fols. 125, 126, 276, 277). Such a separation would require a virtual duplication of the company's entire wagon equipment and wagon force in the City of New York (fol. 125), and would result in serious and unnecessary congestion of vehicles at terminals (fol. 126).

Although the ordinances of the City of New York have provided for more than fifty years, substantially as set forth in the present ordinance, for the licensing of expressmen, their vehicles and their drivers, and although during that entire period the Adams Express Company has been carrying on business in the City of New York and using the city streets, no attempt has ever been made to enforce against it the requirements of this ordinance (fols. 201–203), no demand has ever been made upon it for licenses or license fees (fols. 167–169), and its men have never before been arrested, or its wagons impounded, or its business molested, because not licensed (fols. 342, 343, 345, 361, 362). No bonds have at any time been demanded by the City or given by the company on account of its wagons (fols. 273–275). Neither the premises nor the wagons of the com-

pany have ever been inspected by the municipal authorities, and no attempt at such inspection has ever been made (fols. 275, 276, 374, 375).

The evidence showed that in 1902 the question of the power of the board of aldermen of the City of New York to compel expressmen engaged in interstate commerce to take out licenses was submitted to the Corporation Counsel of the City by the Chief of the Bureau of Licenses, and that he then rendered an official opinion (fol. 470, *et seq.*) in which he stated as follows (fols. 470, 474):

> "It seems to me that the imposition of a license fee and the prescription of rates, as far as they apply to an expressman who transports packages or other articles from Jersey City, or from any other point without the State, to The City or through The City. would be an attempt to regulate interstate commerce and would, therefore, be unauthorized. It has been decided by the Supreme Court of the United States and by the Court of Appeals of this State, that in the case of interstate transportation, the Legislature cannot prescribe the charge to be made for even that part of the transportation which is to be performed within the State. *Wabash R.R. Co.* v. *Ill.*, 118 U. S. 557; *Peo. ex rel. Pa. R.R. Co.* v. *Knight*, 171 N. Y. p. 357."

This opinion was acquiesced in by the City of New York and its officials until the occurrences hereinafter set forth.

In 1908, however, the Adams Express Company agreed with the Bureau of Licenses of the City of New York to take out licenses for a sufficient number of wagons to represent its purely local business, and forty was agreed upon as the number, and these forty licenses were from time to time renewed by the company, and it gave a bond for $4,000 to cover the forty wagons so licensed (fols. 273–275, 478–483). The number was fixed upon as more

than representing that part of the company's transportation which was confined to intrastate business (fols. 478–481). In fact, the number so agreed upon was really ten times the true proportion, for the local business is only one per cent. of the company's entire business in the City, and consequently four instead of forty wagons would have been the proper figure (fol. 121). This action on the part of the company was prompted solely by a spirit of compromise and for the sake of peace (fols. 478, 479). From the time that this agreement with the Bureau of Licenses was entered into until the strike of the Express Company's employees in October and November, 1910, nothing further occurred with respect to requiring licenses for the company's business, wagons, or drivers (fols. 167, 342, 343, 345, 361, 362).

The Adams Express Company is subject to the jurisdiction and regulation of the Interstate Commerce Commission under the act of Congress of June 29, 1906, 34 Stat. 584, c. 3591, and it has duly filed tariffs, fixed rates and otherwise complied with the Interstate Commerce Law (fols. 139, 144, 145, 151-153, 218-222). The rates or charges of the company referred to in the record or in this brief are the rates and charges under the schedules filed with the Interstate Commerce Commission. The extent and comprehensive character of the regulation by Congress are discussed *infra* at pp. 41-48.

On October 21st, 1910, employees of the United States Express Company made a demand upon that company's local agent at Hoboken in New Jersey for an immediate increase in wages (fols. 159, 160). The agent refused to comply with the request for want of authority to entertain

it, and a strike was immediately declared (*id.*). The drivers and helpers of the United States Express Company thereupon deserted their positions, and by threat and intimidation compelled the wagon men in other express companies, including the Adams Express Company, to join them in the strike (fol. 161). Rioting by the strikers promptly ensued, and great damage was inflicted upon the business and property of the Adams Express Company (fols. 160, 161, 502–503). Before the outbreak of this strike, practically none of the employees of the Adams Express Company was a member of the Teamsters' Union, a powerful and widely extended labor organization in the City of New York, but soon after its commencement about ninety per cent. of the wagonmen of the company joined that organization (fol. 216). The employees of the Adams Express Company abandoned their work without any prior notice, without any demand for higher wages or shorter hours, and without a grievance of any kind, solely out of sympathy with the strikers in the other companies and under the influence of fear and intimidation caused by these strikers (fols. 161–163, 218, 285, 286). Although the record does not disclose this fact, it was notorious that the rioting had caused maiming and death and that indictments and criminal trials were pending in the City of New York.

The reserve of employees, called the "extra list" maintained by the company was found to be entirely inadequate to meet the exigencies of this situation (fols. 286, 353–356). The company promptly advertised in ten of the leading New York daily newspapers for drivers and helpers and offered to pay good wages (fols. 286, 287,

340, 341). The advertisements were continued from October 28th until November 15th, which was one day prior to the termination of the strike, but they bore little fruit (fols. 288, 289, 349). Of twenty-five men who applied, only three seemed competent or desirable and were given application blanks to fill out, and only two were put to work (fol. 349). Existing conditions of intimidation rendered it impossible to find in the City of New York the large number of men required to operate the company's wagons (fols. 172, 286, 287, 349–351).

The ordinary teamster is quite unfit for such work (fols. 169, 170). Express service wagonmen are constantly entrusted with packages of great value (fols. 145, 146), and they have to solicit business and make contracts for the company (fols. 116–118). They must be men of integrity, intelligence and discretion (fols. 169–171). It is on that account that the company is compelled carefully to investigate before employing them (fols. 354, 355, 357, 411–417). These employees are continually called upon to fix the charges for carriage, and they must, therefore, have enough intelligence correctly to interpret and apply the complex and voluminous schedules of rates filed by the company with the Interstate Commerce Commission (fols. 117, 118, 152, 153, 169–171, 220–222). Indeed, an error resulting in charging too much or too little would expose the company to suit for unlawful discrimination, to penalties and to indictment (fols. 169–171).* In view of these special requirements, it is manifest that a large corps of competent and reliable wagonmen, numbering at least eight

* *United States* v. *Adams Express Company*, 229 U. S. 381; *New York Central R.R.* v. *United States*, 212 U. S. 481; *Armour Packing Co.* v. *United States*, 209 U. S. 56.

hundred, cannot be hired in a short time or in one place (fols. 286–289, 304, 305). The practical experience of the Adams Express Company has shown that not more than three out of every ten men who apply can ordinarily be employed (fols. 401, 402).

The company, however, could call upon its offices out of town—in Philadelphia, Baltimore, Washington, Pittsburgh, etc.—temporarily to furnish wagonmen for the New York department (fols. 171–172, 305, 312, 313, 323, 324), and by bringing to New York a number of its skilled employees from each of these places, the company could have recruited an emergency force fit to be entrusted with the handling of its shipments, and capable of keeping its business moving, and thus the company could have avoided that utter paralyzation which finally overtook its business (fol. 158).

The City and its officials, however, upon the breaking out of the strike suddenly and for the first time demanded that the company take out licenses for all its wagons and drivers, and accompanied the demand with the threat that failure to procure such licenses would result in the arrest of its drivers and the impounding of its wagons (fols. 71–73, 204, 205). Even if the company had desired to comply with the City's demands, it found compliance practically impossible. The ordinance required that every applicant for a driver's license should be a citizen or have declared his intention to become a citizen and that his application should be endorsed in writing by two reputable *residents* of the City, testifying to the competency of the applicant (sec. 315), and the application blank (fols. 484–486) furnished by the

Bureau of Licenses required the endorsers to certify that to their knowledge the applicant was honest and industrious and a competent driver and to give the grounds of their belief and the sources of their information. It was, of course, improbable that any considerable number of men could be brought from cities a hundred or more miles away, who would be able to find in the City of New York two residents capable of certifying the competence of each of them of their own knowledge as required by the ordinance and the city authorities (fols. 158, 159, 172–174). Being domiciled in other cities and states, they would, in all human probability, be strangers in New York.

This interference by the City in the company's affairs compelled it almost completely to suspend its business in New York and to cease serving the public (fols. 158, 159). Without wagons with which to make collections and deliveries, the interstate express business could not be carried on (fols. 17, 66, 282, 283). Merchandise which kept constantly arriving in the City could not be delivered; it piled up in greater quantities than the company had facilities for guarding (fols. 208–210, 289–291, 339); the congestion at the depots, district offices, etc., grew daily, and the company was finally compelled to rent a pier in Brooklyn to which it moved some of its accumulated freight by floats (fols. 208–210). The perishable freight especially suffered, and this freight, to repeat, amounts to about 60 per cent. in bulk of the inbound traffic of the company (fol. 148). These shipments require prompt delivery, and a delay of 24 or 36 hours is enough to destroy or seriously impair their value (fols. 149, 280). Two or three carloads of perishable freight were entirely ruined and had

to be taken to the city dumping grounds and thrown away (fols. 212, 281, 289). Ten carloads had to be sold at forced sales, and several carloads were shipped back to the place of shipment (fols. 281, 282). Five hundred claims for damage or loss inflicted upon shippers by the company's inability to make deliveries had already been presented to the company at the time the present suit was being tried (fols. 212, 284), and the records in the correspondence bureau of the company indicated that the number of claims would finally be about two thousand (fol. 284). During the period of the strike, covering nearly three weeks, from October 27th to November 16th, 1910, the Adams Express Company lost over $350,000 in freight charges; but its total loss by reason of claims could not be shown at the time of taking testimony (fols. 165, 166).

The Adams Express Company did endeavor to make deliveries during the strike, but the city officials caused its wagons to be seized and impounded and its drivers to be arrested for want of licenses (fols. 71–73, 158, 159, 203, 205, 328–332). Three wagons belonging to the Company and actually engaged at the time in carrying interstate shipments (fols. 218, 219), were seized by the city police and taken to the corporation yards (fols. 224, 225, 241–243, 248, 249). One of these wagons was conspicuously marked with placards containing the words: "This wagon carries interstate commerce traffic only," which was the fact, but it was nevertheless seized and its driver arrested (fols. 203, 204). Two of these wagons were taken to a police station (fol. 421), and there the interstate freight on them was removed by the police into the station house, where it remained for three days

until the company was permitted to take it away (fols. 330, 331, 421, 422, 426). The horses attached to these wagons were put into private livery stables by the police (fols. 236, 237, 256, 427), and the company, in order to recover them, was compelled to pay for their board (fols. 239, 256, 496, 499). For example, to secure the release of two of its wagons from the pound, the company had to pay the City $15 for poundage (fols. 248, 249, 497). If the police and municipal authorities had deliberately intended to side with the strikers and to coerce the express companies, they could not have acted any more oppressively.

It was further proved that there were thousands of wagons and vehicles employed in other businesses which used the streets of the City in identically the same manner as did the wagons and vehicles of the express companies (fols. 257–259, 385–387); that these vehicles included, among others, those used by department stores, brewers, warehousemen, iron makers, grocers, coal dealers, builders, contractors and manufacturers (fol. 258); that none of them or their drivers were licensed, because no ordinance required them to be licensed (fols. 257–259); that many of these vehicles were larger and heavier and a greater menace to other vehicles and pedestrians in the streets than those belonging to express companies (fols. 273, 360, 380, 406), and that the wagons of the express companies were in all their essential parts similar to those used by the department stores, retail grocers and dry goods merchants (fols. 269–273, 322, 323, 359, 360, 377, 404–406), and about the same in weight, size, carrying capacity, height, space occupied on the streets, and in their running parts

and general character (fols. 359, 360, 377–380). It was also shown that these express wagons required no special attention from the police in charge of the traffic in the streets, and did not require any more care than other wagons (fols. 388–390), and in some instances required less (fols. 398–400). In fact, the total number of express wagons using the streets of the City of New York is only about one twentieth of the number of unlicensed wagons of similar kind to be found similarly using the city streets (fols. 258–259, 388, 407). The City expressly stipulated on the hearing that the number of vehicles of all sorts required to be licensed under the ordinances of the City of New York constituted but a small proportion of the total traffic in the streets (fol. 259).

The learned court below held that sections 305 and 306 of the ordinance, which require the licensing of the express business and forbid any one from engaging in that business without a license, were unconstitutional and void because "a person engaged in conducting an interstate express cannot be required by the local or state authorities to take out a local license as a prerequisite to conducting such interstate business in such locality" (p. 183), and, therefore, enjoined the enforcement of these two sections. But the court refused to enjoin the enforcement of the other sections of the same ordinance on the ground that they were separable and might be sustained as a police regulation of the use of the streets of the City of New York. The court also granted an injunction restraining the city officials from enforcing any of the provisions of the ordinance against the company's automobiles or chauffeurs because the state legislature had withdrawn

that subject-matter from the regulative powers of the City by chapter 374 of the laws of 1910 (rec., p. 184).

The complainant has appealed from the final decree in so far as it denied relief against the requirement in the ordinance of a license for all the Express Company's vehicles and men and a bond for all its vehicles employed in interstate commerce, and the City of New York has appealed from the decree in so far as it adjudged that sections 306 and 307 were unconstitutional and void as to interstate express companies and that the ordinance did not apply to express automobiles and their drivers. The complainant's assignment of errors may be briefly summarized as follows:

1. That the intent and purpose of the ordinance in question were to regulate the express business and to require licenses, license fees and bonds for the privilege of transacting that business in or through the City of New York, and that whilst wholly valid in all its provisions as a regulation of local or intrastate expressmen, it is unconstitutional and void as to interstate express companies.

2. That the ordinance is not severable, because it shows on its face that it was a regulation of the express business and not a regulation of the use of the streets by vehicles.

3. That even if the ordinance be severable and be deemed to show on its face that it was intended as a regulation of the use of the streets of the City of New York by express vehicles, it would nevertheless be void, because special and not general, as expressly required by section 50 of the Greater New York Charter, and because

denying to interstate express carriers the equal protection of the laws in that the ordinance does not apply impartially to all similarly situated and using the public streets in like manner.

It is proper to state that since the entry of the final decree now before the court, the authorities of the City of New York have not enforced the ordinance as against the interstate express companies, but have delayed doing so until the authoritative decision of this court.

I.

THE ORDINANCE NOW BEFORE THE COURT IS UNCONSTITUTIONAL AND VOID AS TO THE INTERSTATE EXPRESS COMPANIES BECAUSE IT REQUIRES THEM TO TAKE OUT A LICENSE, PAY LICENSE FEES AND GIVE BONDS FOR THE PRIVILEGE OF CARRYING ON INTERSTATE COMMERCE.

No principle of constitutional law is more firmly established than that no state or municipality can require any party to take out a license or pay license fees or give bonds for the right or privilege of carrying on any business in interstate commerce. It matters not how specious the pretext may be. This principle is, of course, particularly applicable to interstate common carriers whose business is actually regulated by Congress and under the jurisdiction of the Interstate Commerce Commission. As Mr. Justice Bradley said in *Crutcher* v. *Kentucky*, 141 U. S. 47, 58, which involved a statute requiring interstate express companies or their agents to take out licenses for the privilege of carrying on the express business in the State of Kentucky:

> "We have repeatedly decided that a state law is unconstitutional and void which requires a party to

take out a license for carrying on interstate commerce, no matter how specious the pretext may be for imposing it. *Pickard* v. *Pullman Southern Car Co.*, 117 U. S. 34; *Robbins* v. *Shelby County Taxing District*, 120 U. S. 489; *Leloup* v. *Mobile*, 127 U. S. 640; *Asher* v. *Texas*, 128 U. S. 129; *Stoutenburgh* v. *Hennick*, 129 U. S. 141; *McCall* v. *California*, 136 U. S. 104; *Norfolk & Western Railroad Co.* v. *Pennsylvania*, 136 U. S. 114."

See also *Brennan* v. *Titusville*, 153 U. S. 289, 302; *Adams Express Co.* v. *Ohio*, 166 U. S. 185, 218; *Fairbank* v. *United States*, 181 U. S. 283, 306; *Stockard* v. *Morgan*, 185 U. S. 27, 33; *Caldwell* v. *North Carolina*, 187 U. S. 622; *Atlantic &c. Tel. Co.* v. *Philadelphia*, 190 U. S. 160, 162; *St. Clair County* v. *Interstate Sand & Transfer Co.*, 192 U. S. 454, 468; *Western Union Tel. Co.* v. *Kansas*, 216 U. S. 1, 21; *International Textbook Co.* v. *Pigg*, 217 U. S. 91, 108; *Buck Stove Co.* v. *Vickers*, 226 U. S. 205, 215; *The Minnesota Rate Cases*, 230 U. S. 352, 401.

The proofs show beyond possibility of doubt that the service rendered by the drivers and wagons of the Adams Express Company in collecting and delivering packages in the City of New York is an inseparable part of interstate commerce, that all the men and wagons employed in such collection and delivery deal with interstate shipments, that the interstate business of the company is carried on by means of through contracts or bills of lading, that the charge for the service rendered by the drivers and wagons in every instance is not a separate fee or charge, but is included in the indivisible through rate charged for transportation from the point of receipt in one state to the point of delivery in the other, that the company's duty

and liability as a common carrier begins at the place of receipt of a package and terminates only at the place of delivery, and that it would be impractiable to carry on the business of interstate express carrier in any other way.

These facts convinced the learned court below (p. 175) that "the local transportation of interstate packages [is] interstate commerce, and so within the exclusive jurisdiction of the federal government." This ruling was in accord with controlling decisions. *Louisiana R.R. Comm.* v. *Tex. & Pac. Ry. Co.*, 229 U. S. 336, 341; *St. L. & San Francisco Ry.* v. *Seale*, 229 U. S. 156, 161; *Texas & N. O. R.R. Co.* v. *Sabine Tram Co.*, 227 U. S. 111; *United States* v. *Union Stock Yard*, 226 U. S. 286; *Ohio R.R. Comm.* v. *Worthington*, 225 U. S. 101; *So. Pac. Terminal Co.* v. *Int. Comm. Comm.*, 219 U. S. 498, 526; *Galveston, H. &c. Ry. Co.* v. *Texas*, 210 U. S. 217; *Heyman* v. *Southern Railway Co.*, 203 U. S. 270, 274. See also *Jewel Tea Co.* v. *Lee's Summit, Mo.*, 189 Fed. 280, 281; 198 Fed. 532. In many of these cases, the service alleged to be intrastate commerce was performed wholly within a state, under local, as distinguished from through, bills of lading, and with interruptions that apparently divided the transportation into several intrastate transactions instead of a single interstate transportation; but, nevertheless, it was held that, as the property when shipped was destined for a point outside the state, the shipment constituted interstate commerce and that every part of its progress from one state to the other was of the same character. As Mr. Justice McKenna said in the *Louisiana* case (229 U. S. at p. 341):

> "The principle enunciated in the cases was that it is the essential character of the commerce, not the accident of local or through bills of lading, which deter-

> mines Federal or state control over it. And it takes character as interstate or foreign commerce when it is actually started in the course of transportation to another State or to a foreign country."

In other words, the principle enunciated by this court is that the interstate commerce clause of the Constitution guarantees the right to ship merchandise from one state into another, and covers and protects the shipment from the time it commences its transit by whatever means, local or interstate, until the termination of the shipment by delivery at the place of consignment. *The Daniel Ball*, 10 Wall. 557, 565; *Vance* v. *Vandercook Co.*, 170 U. S. 438, 451; *American Express Co.* v. *Iowa*, 196 U. S. 133, 142; *Adams Express Co.* v. *Iowa*, 196 U. S. 147; *McNeill* v. *Southern Railway Co.*, 202 U. S. 543, 559; *Adams Express Co.* v. *Kentucky*, 206 U. S. 129.

It is true that it was once held by this court in *Osborne* v. *Mobile*, 16 Wall. 479, that an ordinance requiring interstate express companies to be licensed before they could carry on their business in the City of Mobile was valid; but this ruling was recognized to be erroneous in the subsequent case of *Leloup* v. *Port of Mobile*, 127 U. S. 640, 647, where the court, speaking of the earlier case, said:

> "In view of the course of decisions which have been made since that time [*i. e.*, since 1872], it is very certain that such an ordinance would now be regarded as repugnant to the power conferred upon Congress to regulate commerce among the several States."

The later case of *Crutcher* v. *Kentucky*, 141 U. S. 47, *supra*, is so analogous to the case at bar that it should be deemed conclusive. There a statute of Kentucky required the agents of interstate express companies to be licensed as a condition to their being permitted to do

business within the state. The statute provided that, before any express agent could be licensed, there should be filed with the state auditor a statement of the financial standing of the express company he was to represent, that such statement should show an actual capital of at least $150,000, that thereupon the auditor should issue a license to the express company's agent to carry on its business, and that a small license fee, namely, $5, should be paid by the agent or the company for the license. No bond was required as in the case at bar. It was contended on behalf of the State of Kentucky that this legislation was a valid exercise of the police power in that it was simply an attempt in good faith to protect the people of Kentucky from loss through the insolvency or dishonesty of foreign express companies. The state court had held that (141 U. S. at p. 51):—

> "The statute was enacted for the benefit of the citizens of the State, under which the auditor is required to have satisfactory evidence of the ability and solvency of the corporation to do that which it has undertaken to do by virtue of its act of incorporation. Those who intrust to its custody the transportation of their property are entitled to some security that its undertaking will be performed, and we find no law of Congress, or any constitutional provision, that would deny to the State the right to impose such a burden upon those who undertake the discharge of such responsible duties."

And counsel for the state reiterated the argument in this court (141 U. S. at p. 56). In fact, there was laid before this court in the *Crutcher* case every argument in favor of the police power that has been put forward in the case at bar to sustain the validity of the present ordinance except the argument as to the regulation of the use of the streets

by vehicles. Thus, the learned counsel for the City of New York urged in the court below that "the second great object of these ordinances is to secure the safety of goods entrusted to the drivers of these wagons by or for the citizens of the city, and to prevent fraud, as by the delivery of fictitious shipments and the collection of charges thereon." This court in the *Crutcher* case, speaking by Mr. Justice Bradley, then said (141 U. S. 57, 59):

> "To carry on interstate commerce is not a franchise or a privilege granted by the State; it is a right which every citizen of the United States is entitled to exercise under the Constitution and laws of the United States. . . . But the main argument in support of the decision of the Court of Appeals is that the act in question is essentially a regulation made in the fair exercise of the police power of the State. But it does not follow that everything which the legislature of a State may deem essential for the good order of society and the well being of its citizens can be set up against the exclusive power of Congress to regulate the operations of foreign and interstate commerce."

It was also argued in the *Crutcher* case, that the Kentucky statute should be sustained because the express company there before the court was engaged to a small extent in intrastate carriage, just as here we find the Adams Express Company doing a small local business, less than one per cent. of its whole business in or through the City of New York. But this court answered (p. 59):

> "We do not think that the difficulty is at all obviated by the fact that the express company, as incidental to its main business (which is to carry goods between different States), does also some local business by carrying goods from one point to another within the State of Kentucky. This is, probably, quite as much for the accommodation of the people of that State as for the advantage of the company. But whether so or not, it does not obviate the objec-

> tion that the regulations as to license and capital stock are imposed as conditions on the company's carrying on the business of interstate commerce, which was manifestly the principal object of its organization. These regulations are clearly a burden and a restriction upon that commerce. Whether intended as such or not they operate as such."

The doctrine of the *Crutcher* case has repeatedly received the unqualified approval of this court upon every point decided in it. *Western Union Telegraph Co.* v. *Kansas*, 216 U. S. 1, 19; *International Textbook Co.* v. *Pigg*, 217 U. S. 91, 108; *Buck Stove Co.* v. *Vickers*, 226 U. S. 205, 215. In *International Textbook Co.* v. *Pigg*, Mr. Justice Harlan declared that the *Crutcher* case was "a case in point . . often referred to and never qualified by any subsequent decision." It will be noted that the principle of the *International Textbook Co.* case goes very much further than is necessary to condemn the ordinance now before the court, for Mr. Justice Harlan then said, in language peculiarly applicable to the case at bar (217 U. S. at p. 110):

> "It is true that the statute does not, in terms, require the corporation of another State engaged in interstate commerce to take out what is technically 'a license' to transact its business in Kansas. But it denies all authority to do business in Kansas unless the corporation makes, delivers and files a 'statement' of the kind mentioned in § 1283. The effect of such requirement is practically the same as if a formal license was required as a condition precedent to the right to do such business. In either case it imposes a *condition* upon a corporation of another State seeking to do business in Kansas, which, in the case of interstate business, is a regulation of interstate commerce and directly burdens such commerce. The State cannot thus burden interstate commerce."

Buck Stove Co. v. *Vickers*, 226 U.S. 205, is to the same effect.

In the *Western Union* case (216 U. S. at p. 37), the court reaffirmed the holding of the *Crutcher* case that an interstate carrier incidentally engaged in intrastate commerce was not for that reason subject to local regulations which directly burdened interstate commerce, and used the following emphatic language:

> "We cannot fail to recognize the intimate connection which, at this day, exists between the interstate business done by interstate companies and the local business which, for the convenience of the people, must be done or can generally be better and more economically done by such interstate companies rather than by domestic companies organized to conduct only local business. It is of the last importance that the freedom of interstate commerce shall not be trammelled or burdened by local regulations which, under the guise of regulating local affairs, really burden rights secured by the Constitution and laws of the United States. While the general right of the States to regulate their strictly domestic affairs is fundamental in our constitutional system and vital to the integrity and permanence of that system, that right must always be exerted in subordination to the granted or enumerated powers of the General Government, and not in hostility to rights secured by the Supreme Law of the Land."

A strong analogy will be found in the Employers Liability Acts (35 Stat. 65, c. 149; 36 Stat. 291, c. 143). It must be clear that if the interstate express companies were within the scope and operation of that statute, every driver and every wagon employed in collecting and delivering intrastate shipments would clearly be engaged in interstate commerce, even though part of the service related to intrastate shipments. *Pedersen* v. *Del., Lack. & West. R.R.*, 229 U. S. 146; *St. L. & San Francisco Ry.* v. *Seale*, 229 U. S. 156. Within the principle of these cases, any rail-

road employee employed in collecting and delivering interstate shipments in carts or wagons would be engaged in interstate commerce. *Illinois Central R. Co.* v. *Porter*, 207 Fed. 311; *Jewel Tea Co.* v. *Lee's Summit, Mo.*, 189 Fed. 280; 198 *ib.* 532; *United States* v. *Colorado & N. W. R. Co.*, 157 Fed. 321, 323.

The case of *People ex rel. Pennsylvania RR. Co.* v. *Knight*, 171 N. Y. 354, affirmed in 192 U. S. 21, is readily distinguishable. In that case the cab service to and from the Pennsylvania Railroad Company's ferry in the City of New York was distinct and separate from interstate commerce, and covered an entirely separate service and contract and was the subject of a separate charge. Judge Cullen, delivering the opinion of the New York Court of Appeals, emphasized this controlling feature as follows (171 N. Y. 356):

> "I insist, however, that the transportation for which the relator has been taxed is not interstate commerce. It is not rendered under any contract for transportation from a point within the state to a point without the state, or *vice versa*, but is solely a carriage between two points within the state under a separate contract. As pointed out by the Appellate Division, the use of the relator's cabs is not restricted to those who have previously secured transportation to or from some point on its railroad, nor is such use confined to travelers upon the railroad."

And this court likewise emphasized this feature. Thus, Mr. Justice Brewer, delivering the opinion of the court, said (192 U. S. at p. 27):

> "As we have seen, the cab service is rendered wholly within the State and has no contractual or necessary relation to interstate transportation. It is either preliminary or subsequent thereto. It is independently contracted for, and not necessarily connected therewith."

An entirely different question from the one then passed upon by this court would have been presented if it had appeared that the cab service was customarily part of the through contract for transportation, and if it had been the established course of business of the railroad company to transport passengers from its terminal stations or ferries to their residences as part of a through service. In the case of the express company, however, the cartage is an integral, indivisible and indispensable part of the through contract which it enters into; and not only is it under legal obligation to perform that service, but no separate charge is made for it.

An attempt was made in the court below to distinguish the *Crutcher* case by the assertion that the matters required to be done by the statute in that case were required "as a condition of being allowed to carry on any business whatever in the State," whilst under the ordinance now in question "no conditions are imposed upon the Express Companies as to their right to do business in the State or City." There is no sound or substantial distinction. If the ordinance is valid, the right of the express companies to deliver and collect interstate shipments by means of wagons is absolutely dependent upon the conditions imposed by the ordinance that the companies shall take out city licenses both for wagons and for drivers and comply with the other requirements of the ordinance in order to be permitted to carry on an integral and inseparable part of interstate commerce. The distinction suggested is hardly even verbal, and it conflicts with the ruling made in *International Textbook Co.* v. *Pigg*, 217 U. S. 91. To declare, as does the ordinance before the court,

that no one shall engage in the express business unless his wagons and drivers are licensed and unless he pays license fees and gives a bond and that his failure to comply with any of these provisions shall expose him to penalties or imprisonment, or both, is certainly to impose conditions upon the right or privilege to engage in that business. As Mr. Justice Harlan said in the last cited case (at p. 111): "The effect of such requirement is practically the same as if a formal license was required as a condition precedent to the right to do such business." In their brief in the court below the defendants said: "No conditions are imposed upon the express companies as to their right to do business in the State or City. There is merely a regulation of their local instrumentalities locally employed in the transaction of such business." The statute in the *Crutcher* case was a similar regulation of the local activities and business of express companies' agents within the state, but it was nevertheless held void, because it sought to regulate an inseparable part of interstate commerce just as does the ordinance in the case at bar.

It should be appreciated by the court that if the present ordinance is valid as to interstate express companies, it is likewise valid as to all railroad, steamship and fast freight or forwarding companies, and that every railroad, freight, baggage and express car is included within the ordinance and must be licensed and bonded. The principle is at any rate comprehensive. The language of section 330 is as follows:

> "Every vehicle of whatever construction kept or used for the conveyance of baggage, packages, parcels and other articles within or through the City of New

> York for pay, shall be deemed a public express, and the owner thereof shall be deemed a public expressman, and the term expressman shall be deemed to include any common carrier of baggage, packages, parcels or other articles within or through the City of New York."

If, therefore, the ordinance is valid as to interstate express companies, it will be equally valid as to all interstate carriers, and such carriers can then be required to obtain licenses, to pay license fees and to give bonds by any city, town, or village "within or through" which they may engage in interstate business in respect of "every vehicle of whatever construction kept or used for the conveyance of baggage, packages, parcels and other articles." The very same arguments that are now urged in support of the validity of the present ordinance and its application to interstate express companies would support its validity and application to other carriers doing business in or through the City or State of New York.

The character of the defendants' proposition will best be appreciated if we state it in terms of its effect and final analysis. According to the defendants, every carrier engaged in interstate commerce, although regulated by Congress and subject to the jurisdiction of the Interstate Commerce Commission, can be compelled by every state or municipality in or through which it does business (1) to take out a license and pay license fees with respect to its employees and its vehicles, as so-called "local instrumentalities," for the privilege of engaging in or carrying on the business of interstate commerce; (2) to employ in each such state or municipality only such drivers, porters, station agents, etc., as the state or municipality

has licensed, and this class of persons, under defendants' reasoning, may include every person who renders any service in connection with the safety of the persons or property transported or who might perpetrate a fraud upon travellers, shippers or consignees; (3) to employ only citizens or those who have declared their intention to become such, and (4) to give a bond for every vehicle of whatever construction in an amount to be fixed in the discretion of each state or municipality conditioned for the safe and prompt delivery of the person or property intrusted to the carrier.

It is confidently submitted that no such interference with or regulation of an inseparable part or instrumentality of interstate commerce can be tolerated and that no case lends support to the existence of any such broad and overwhelming power over interstate carriers on the part of the states or their municipalities.

II.

THE PLAIN INTENT AND PURPOSE OF THE ORDINANCE IN QUESTION WERE TO REGULATE THE BUSINESS OF EXPRESS CARRIERS.

It has not been suggested by any one that the ordinance in question is in any respect invalid in its application to those local expressmen who hold themselves out as common carriers of goods from one part of the City or State of New York to another and who are engaged in that occupation. This business existed long before the organization of the interstate express companies, and it has long been licensed and regulated by municipal or state au-

thorities. As to these local expressmen, the ordinance constitutes a full and adequate regulation of their business, as authorized by section 51 of the Greater New York Charter. Thus constituting a regulation of the business of local expressmen under section 51 of the Charter, it is submitted that the same provision can hardly have an entirely different intent and seek to accomplish an entirely different purpose as to interstate express companies, and as to them become a mere regulation of the use of the streets under section 50 of the Charter and not a regulation of their business. If the ordinance be, as it plainly and unmistakably declares on its face, a regulation of the business of expressmen, it cannot be upheld as to interstate expressmen on the ground that parts of it might have been enacted if the board of aldermen had had a different intent and purpose in mind. It is the merest speculation to tear certain provisions from their context and argue that the board of aldermen of the City of New York *might* have passed such inappropriate regulations if it had intended to deal, not with the express business, but with the use of the streets of the City. And it is unreasonable to assume that, if the board had been regulating the use of the streets with a view to the safety of travel, it would have wholly failed to indicate that purpose or have singled out only a small class of drivers and wagons and exempted all others similarly situated and using the streets in like manner.

The ordinance shows on its face that its intent and purpose were to regulate *business* and nothing else, and that it could not have been intended as a regulation of the use of the streets of the City of New York. Thus article I of

title II is entitled "Business requiring a license;" section 305, which immediately follows this caption, provides that "the following *businesses* must be duly licensed as herein provided," and then proceeds to enumerate them, among which is that of expressmen; section 330 defines an expressman as a "common carrier of baggage, packages, parcels or other articles within or through the City of New York;" section 306 forbids persons to "carry on any such *business* without a license"; section 309 is concerned with the renewal of licenses "for any *business* enumerated above"; section 374 requires the inspection of "licensed vehicles and *places of business*"; section 375 commands the licensee to inform the authorities of "any change of . . . *place of business*," and to perform the duties of "the *business* licensed"; and finally, section 379 makes it a crime to engage in "any *business herein regulated* without a license therefor." Moreover, section 333, which purports to enact a schedule of rates and charges for express carriage, is, beyond all doubt, a regulation of the express business, for the right to fix prices is the most potent manifestation of the right to regulate any business; and Ordinance No. 440, approved May 22, 1899 (Ord., Res., etc., of Municip. Assem. 1899, vol. II, p. 204, et seq.), which codified and revised the license ordinances of the City of New York, and which, except for slight amendments, is the same as the ordinance complained of herein, is entitled "A general ordinance in relation to *business* requiring a license and the *regulation* thereof, in the City of New York."

These sections are all interdependent and treated as part of one entire and inseparable scheme. There is not only a constant reference to *business*, but a constant use of

the phrases "herein provided" and "this ordinance" (*e. g.*, secs. 305, 306, 307, 309, 374, 379), which is a most persuasive indication of the understanding that the matter dealt with in all the sections was but one thing, namely, the regulation of business. It is almost as plain and unambiguous as if the board of aldermen had expressly declared that all the sections of the ordinance were being passed under section 51 of the Greater New York Charter, which authorized "the *licensing and otherwise regulating the business of . . . expressmen*," and not under section 50, which alone relates to the use of the streets by animals and vehicles. *City of Detroit* v. *C. H. Little Co.*, 163 Mich. 444, 448.

The force of these contentions was appreciated by the learned court below, for it said (p. 183):

> "It may be taken for granted that when the group of ordinances contained in chapter 7 [of the New York Code of Ordinances] were enacted—if they were enacted as a single piece of legislation, which we may assume to have been the fact—the board of aldermen had primarily in mind the licensing and otherwise regulating certain specified businesses, included in the enumeration of section 51 of the Greater New York Charter (Laws 1901, c. 466). It is difficult to see how any one can read the first two sections without reaching this conclusion. Section 305 provides that 'the following *businesses* must be duly licensed, as herein provided'; and section 306 provides that 'no person shall engage in or carry on any such *business* without a license therefor' under certain specified penalties."

In considering the contention of the defendants that the ordinance is not a regulation of the express business and hence not a regulation of interstate commerce when applied to the interstate express companies, it is important to appreciate the history of the ordinance and its uniform prac-

tical and administrative construction. If not intended as a regulation of business, but merely of the use of the streets and protection against imposition or dishonesty, why was it not heretofore enforced as against the interstate express companies? The answer is that from the very beginning the municipal authorities have recognized that it was merely a regulation of business and as such inapplicable to interstate carriers. This long continued practical interpretation is most persuasive that the ordinance was intended and operated as a regulation of business and not at all as a regulation of the use of the public streets by express vehicles.

In varied forms and with occasional amendments, the same ordinance has constituted a part of the legislation of the City of New York for more than half a century. Provisions requiring the licensing of expressmen and express wagons first appeared in 1856 in William Kent's revision of the ordinances of the City of New York (pp. 498–499); and, as will be seen from the references collected in the margin,* they have reappeared in every subsequent revision.

Ever since its organization, nearly sixty years ago, the Adams Express Company has been using wagons in the streets of the City of New York, and has been employing drivers to take charge of and drive them and collect and deliver packages. Yet during all that period and prior

* D. T. Valentine's revision (1859), ch. 38, pp. 367–368; Shepard & Shafer's revision (1881), ch. 8, art. 39, pp. 250–252; Laird's revision (1894), ch. 8, art. 39, pp. 65–66; Percy & Collins' revision (1897), ch. 7, art. 11, pp. 83–85; Ordinance No. 440, approved by the Mayor, May 22, 1899. This last revisory ordinance, with slight modifications, is the one involved in the case at bar. See Cosby's Code of Ordinances (1910), note p. 68.

to the present controversy, the ordinance has not been enforced against it, and neither its premises nor its wagons nor its men have been inspected by the city authorities, nor have any of its wagons been impounded, nor any of its drivers arrested for failure to have a license. Until a few years ago, not a single wagon or driver of the company was licensed, and never until then was any demand or intimation made by any city official that the company must procure licenses for them.

This exceptionally extensive and long continued administrative or executive construction of such an ordinance cannot be ignored. It shows clearly that all those whose duty it was to enforce the ordinance read it as does the complainant, and construed it as did Corporation Counsel Rives in the opinion above quoted, namely, as a regulation of the express business. The weight to be given to such a practical interpretation has been again and again declared by the highest court of the State of New York, and this is a familiar doctrine in this court. Thus, in *Easton* v. *Pickersgill*, 55 N. Y. 310, 315, the court said:

> "General usage, indeed, long continued and hitherto unquestioned, has great force; and the practical construction of the law by so many public officers, though not given upon adverse litigation, has still much of the weight of judicial decision."

See also *Matter of Tiffany*, 179 N. Y. 455, 459; *City of New York* v. *N. Y. City Ry. Co.*, 193 N. Y. 543; *Grimmer* v. *Tenement House Dept.*, 205 N. Y. 549; *People ex rel. Werner* v. *Prendergast*, 206 N. Y. 405, 411; *Fairbank* v. *United States*, 181 U. S. 283, 307; *Studebaker* v. *Perry*, 184 U. S. 258, 268; *United States* v. *Sweet*, 189 U. S. 471, 473; *McMichael* v. *Murphy*, 197 U. S. 304, 312; *Komada* v. *United States*, 215 U. S. 392, 396.

During the course of this long continued and consistent practical construction, clearly evidencing that in the opinion of the officers of the municipality the ordinance regulated the express business and could not, therefore, be enforced against expressmen engaged in interstate commerce, there have been numerous revisions and re-enactments of the ordinance, either with no changes at all or with merely minor alterations. In 1899 (Ord. No. 440, approved May 22, 1899), the license ordinances were codified, and re-enacted in their revised form with but few and unimportant changes, and in 1906 all the ordinances of the City of New York were codified and re-enacted. Section 57 of the Charter provides for an annual compilation of the ordinances by the board of aldermen. It has been frequently decided by this court "that the re-enactment by Congress, without change, of a statute, which had previously received long continued executive construction, is an adoption by Congress of such construction." *United States* v. *Hermanos y Compañia*, 209 U. S. 337, 339; *Copper Queen Mining Co.* v. *Arizona Board*, 206 U. S. 474, 479; *United States* v. *Falk*, 204 U. S. 143, 152; *New Haven R.R.* v. *Interstate Com. Com.*, 200 U. S. 361, 401. The same principle should apply to the adoption by a municipal legislature of the executive construction of an ordinance by repeatedly re-enacting it substantially in the form in which it was construed. *People ex rel. Outwater* v. *Green*, 56 N. Y. 466, 475; *Pouch* v. *Prudential Ins. Co.*, 204 N. Y. 281, 288.

If further evidence of the fact that the ordinance regulates the business of expressmen and not the use of the public streets were needed, it would be found in the attitude of the municipal authorities towards the express company's automobiles. As the proofs show, the chauffeurs of

the sixty-eight automobiles belonging to the Adams Express Company are all licensed by the Secretary of State (fols. 119, 269), and they hold their licenses under the so-called "Callan Law" of the State of New York (L. 1910, c. 374). This statute provides, section 288, that the "local authorities shall have no power to pass, enforce or maintain any ordinance, rule or regulation requiring from any owner or chauffeur to whom this article is applicable any tax, fee, license or permit for the use of the public highways, or excluding any such owner or chauffeur from the free use of such public highways, . . . and no ordinance, rule or regulation contrary to or in any wise inconsistent with the provisions of this article, now in force or hereafter enacted, shall have any effect." It would seem clear, therefore, that the ordinance now in question would be entirely inapplicable to the automobiles of the Adams Express Company, if the ordinance be regarded as a regulation of the use of the streets. In that aspect, the ordinance could not possibly be sustained because expressly forbidden by statute. Yet the municipal authorities of the City of New York and the defendants insist that the chauffeurs must take out licenses as drivers of express wagons, that a license fee of $5 must be paid annually and a bond given for each of the sixty-eight automobiles operated by the Adams Express Company. The court below adjudged the present ordinance to be in conflict with and superseded by the act of the legislature (p. 186), but the City has appealed from this part of the decree (p. 192). It must be evident that it is only because the present ordinance is a regulation of the business of expressmen that it can be made to apply

to express automobiles already licensed to use the public streets by the legislature itself. A local expressman using an automobile clearly would have to comply with the ordinance because of the indisputable power of the board of aldermen to regulate his business when confined to city or state limits. The action of the authorities in arresting or threatening to arrest the drivers of the Adams Express Company's automobiles licensed by the State and carrying interstate packages conclusively shows that they were not acting upon the theory that the ordinance was a regulation of the use of the streets. They were, of course, familiar with the Callan law, and they must have regarded the ordinance now in question as regulating the express business and, therefore, applicable to automobiles engaged in that business whether local or interstate notwithstanding any license from the state government to use the public streets.

It should further be noted that no question is presented of any attempt by the City of New York to separate and regulate the local business of the large express companies as distinguished from their interstate business. The ordinance applies to the *business* of express *"within or through"* the City (sec. 330), and includes the interstate as well as the local business of the express companies. Moreover, it has been interpreted and recently enforced by those charged with its enforcement as covering and intended to cover both local and interstate business. If it covers and includes both the local and interstate business of interstate express companies, then it must be declared wholly invalid. The court cannot remodel or reconstruct the ordinance so as to make it read as if its

operation were expressly limited to the wagons and drivers of the interstate carriers who are engaged in local business, and thus compel such carriers at prohibitive expense and inconvenience to separate the local from the interstate business. *Williams* v. *Talladega*, 226 U. S. 404, 419; *Illinois Central Railroad* v. *McKendree*, 203 U. S. 514, 529; *Allen* v. *Pullman Company*, 191 U. S. 171, 179.

III.

CONGRESS HAS LEGISLATED UPON THE SUBJECT COVERED BY THE ORDINANCE AND ITS LEGISLATION IS EXCLUSIVE AND SUPERSEDES ALL STATE REGULATIONS.

Assuming that it might have been proper for the City of New York to enact the present ordinance in the absence of federal legislation upon the same subject, there can be no doubt, in view of the comprehensive acts of Congress and the regulations of the Interstate Commerce Commission now covering express companies (34 Stat. 584; 36 Stat. 544), that the power of local authorities to license and regulate the business of interstate express companies can no longer be exercised. The right of a state or a city "to apply its police power to subjects under the exclusive control of Congress, but in regard to which Congress has been silent, ceases as soon as Congress acts on the subject and manifests its purpose to call into effect its exclusive power." *Nor. Pac. Ry.* v. *Washington*, 222 U. S. 370; *Southern Ry. Co.* v. *Reid*, 222 U. S. 424; *Southern Ry. Co.* v. *Reid & Beam*, 222 U. S. 444; *N. Y. Central*

R. R. v. *Hudson County*, 227 U. S. 248; *St. Louis, Iron Mt. & S. Ry.* v. *Edwards*, 227 U. S. 265; *Louisville & N. R. Co.* v. *Hughes*, 201 Fed. 727. This principle was admitted by the learned court below who said (p. 175):

> "Not only is the local transportation of interstate packages interstate commerce, and so within the exclusive jurisdiction of the federal government, but that government has actually taken control and regulated such business by express detailed provisions and by giving to the Interstate Commerce Commission very broad powers of regulation. See the Interstate Commerce Act as amended June 29th, 1906, and June 18th, 1910. . . . Whatever authority may be given by law to the local legislature to regulate business generally or to regulate the business of certain specified classes of persons, *qua* business, is inoperative to control a person engaged in interstate commerce, whose business is already regulated by federal law, since the business of such person is within the exclusive jurisdiction of Congress."

An examination of the Interstate Commerce Act as amended June 29, 1906, and June 18, 1910, will show how comprehensive and far reaching are the regulations which subject all interstate express companies to the provisions of that act and the jurisdiction of the Interstate Commerce Commission. In section 1, it is provided that (34 Stat. 584):

> "The term 'common carrier' . . . shall include express companies . . . and the term 'transportation' shall include cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported; and it shall be the duty of every carrier subject to the provisions of this Act to provide and furnish such

transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates applicable thereto."

The act of June 18, 1910, added the following among other provisions (36 Stat. 546):

"And it is hereby made the duty of all common carriers subject to the provisions of this Act to establish, observe, and enforce just and reasonable classifications of property for transportation, with reference to which rates, tariffs, regulations, or practices are or may be made or prescribed, and just and reasonable regulations and practices affecting classifications, rates, or tariffs, the issuance, form, and substance of tickets, receipts, and bills of lading, the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, the carrying of personal, sample, and excess baggage, and all other matters relating to or connected with the receiving, handling, transporting, storing, and delivery of property subject to the provisions of this Act which may be necessary or proper to secure the safe and prompt receipt, handling, transportation, and delivery of property subject to the provisions of this Act upon just and reasonable terms, and every such unjust and unreasonable classification, regulation, and practice with reference to commerce between the States and with foreign countries is prohibited and declared to be unlawful."

Section 6 provides for the filing and publishing of schedules of rates by express companies, and compels them to state plainly the places between which property will be carried, the classification of freight and, separately, all terminal charges. Section 2 prohibits unjust discriminations and section 3 forbids undue preferences. Section 15 empowers the Interstate Commerce Commission to prescribe maximum rates. Section 20 imposes the duty of issuing a receipt or bill of lading for the carriage, and

renders the express company liable as carrier for any damage or injury to the property in the course of transportation whether by itself or by any other carrier. Failure to comply with the statute is punished by penalty, fine, imprisonment or enlarged liability for damages. Section 10 makes it a misdemeanor punishable by a heavy fine for one subject to the Act to charge a rate greater than that fixed in the published schedules. Under this act of Congress, the liability imposed upon the express company as carrier clearly and indisputably begins at the point of receipt of a package by wagon or otherwise and does not terminate until actual delivery to the consignee.

Congress has, therefore, legislated in detail in regard to the whole subject of transportation by express companies as common carriers, and has made it their duty to establish, observe and enforce just and reasonable regulations and practices affecting not only vehicles used in the shipment or carriage of express packages, but "all services in connection with the receipt, delivery, . . . transfer in transit . . . and handling of property transported," as well as in regard to all matters "relating to or connected with the receiving, handling, transporting, storing, and delivery of property . . . which may be necessary or proper to secure the safe and prompt receipt, handling, transportation and delivery of property . . . upon just and reasonable terms." It would be difficult to select more comprehensive language in which to cover the whole contract and legal duty and all the details and service of transportation by the express companies as common carriers from the beginning to the end of such transportation. The refusal or neglect of an express company to collect and

receive or deliver packages as heretofore would come within the purview of this legislation, and the imposition of a separate charge for collecting or delivering packages in the City of New York would be an attempt to impose a terminal charge required to be reported to the Interstate Commerce Commission and subject to its power of regulation.

The primary purpose of the ordinance in question was undoubtedly to regulate the business of express companies and their relations to consignors and consignees; but it is clear that Congress has itself occupied that field by the above legislation. The defendants contended below that one of the great objects of the ordinance was "to secure the safety of goods entrusted to the drivers of these [express] wagons . . . and to prevent fraud, as by the delivery of fictitious shipments and the collection of charges thereon." But the same subject is fully covered by sections 1, 6 and 10 of the Interstate Commerce Act, which treats with and comprehends every step and service "which may be necessary or proper to secure the safe and prompt receipt, handling, transportation and delivery of property subject to the provisions of this Act," and the honest collection of charges is explicitly regulated by sections 6 and 10.

Section 375 of the ordinance requires expressmen at all times to perform their public duties; but section 1 of the Act of Congress makes substantially the same requirement. Section 333 of the ordinance prescribes a tariff of charges for expressmen; but that section is void as to interstate shipments. Section 332 of the ordinance requires every public expressman to give a bond to the City "for the safe and prompt delivery of all packages." Congress preferred to accomplish the same end by differ-

ent means, namely, by requiring the carrier to establish just and reasonable regulations and practices (sec. 1) and by imposing upon the initial carrier the duty of issuing a receipt and a liability for loss or damage occurring anywhere in the course of the transit (sec. 20). It should not rest with the City of New York to say that its regulations for the same purpose shall not be superseded because a procedure identical with its own was not adopted by Congress. Neither can the City urge that its regulations may stand, because Congress has not expressly prohibited them. A direct prohibition is not necessary. "Legislation of Congress in regard to matters of interstate commerce need not be inhibitive, but only to occupy the field, in order to supersede state statutes [or municipal ordinances] on the same subject." *Southern Ry. Co.* v. *Reid & Beam*, 222 U. S. 444.

It is, therefore, plain that Congress has taken jurisdiction of the general subject of the business of express carriers, and has prescribed extensive and comprehensive regulations to accomplish the very purposes sought to be accomplished by the ordinance now in question. As the court said in *N. Y. Central R.R.* v. *Hudson County*, 227 U. S. 248:

> "An assertion of power by Congress over a subject within its domain must be treated as co-terminous with its authority over the subject, and leaves no element of the subject to the control of the State."

In the case last cited it was argued (227 U. S. at p. 263) "that as the text [of the act to regulate commerce] only embraces railroad ferries and the ordinances were expressly decided by the [state] court below only to apply to persons other than railroad passengers, therefore the action by

Congress does not extend to the subject embraced by the ordinances." And a similar argument was made by the defendants in this case. But this court overruled the contention, saying (at p. 264):

> "As all the business of the ferries between the two States was interstate commerce within the power of Congress to control and subject in any event to regulation by the State as long only as no action was taken by Congress, the result of the action by Congress leaves the subject, that is, the interstate commerce carried on by means of the ferries, free from control by the State. We think the argument by which it is sought to limit the operation of the act of Congress to certain elements only of the interstate commerce embraced in the business of ferriage from State to State is wanting in merit. In the absence of an express exclusion of some of the elements of interstate commerce entering into the ferriage, the assertion of power on the part of Congress must be treated as being coterminous with the authority over the subject as to which the purpose of Congress to take control was manifested. Indeed, this conclusion is inevitable since the assumption of a purpose on the part of Congress to divide its authority over the elements of interstate commerce intermingled in the movement of the regulated interstate ferriage would be to render the national authority inefficacious by the confusion and conflict which would result."

As this decision well illustrates, it is not necessary that the congressional legislation shall be commensurate in scope and detail with the state legislation in order to oust the latter. This view is further illustrated in the carefully considered case of *Louisville & N. R. Co.* v. *Hughes*, 201 Fed. 727, 750, where the court, after reviewing a number of earlier decisions in which state legislation was held to have been superseded, remarked that "it will be observed that in none of these cases did the act of Congress expressly

declare an intention of occupying the whole field." See also *Mo. K. & T. Ry. Co.* v. *Fookes*, 40 S. W. 858, 859.

The ordinance now in question does not merely ordain rules to be observed by express companies in order to promote objects covered by the congressional enactments, but it seeks independently to achieve those very objects by prohibiting express companies from engaging in interstate commerce at all until licenses have been obtained from the local authorities, license fees paid and bonds given. That certainly amounts to a regulation of the express business "*qua* business," and hence under his own reasoning the learned court below should have held that the ordinance was "inoperative to control a person engaged in interstate commerce, whose business is already regulated by federal law" (p. 175).

IV.

The ordinance in question is not severable.

The learned court below conceded that it might be taken for granted that "the board of aldermen had primarily in mind the licensing and otherwise regulating certain specified businesses included in the enumeration of section 51 of the Greater New York Charter," adding that "it is difficult to see how any one can read the first two sections without reaching this conclusion" (p. 183), but it held that incidentally "regulations as to the use of the streets were adopted," that these incidental regulations were separable within the doctrine of *Willcox* v. *Consolidated Gas Co.*, 212 U. S. 19, 54, and that the separated provisions could be enforced notwithstanding

the invalidity of the main and underlying intent and purpose of the enactment. In other words, it seems to have been the idea that although the underlying and controlling purpose and intent of the enactment had wholly failed as to interstate express companies (but not as to local expressmen), nevertheless the incidental might be given effect because it might have been enacted if a different purpose or intent had been in mind. It is submitted that the principle of severability relied on by the learned court below was inapplicable, for that principle only applies where the main purpose and underlying intent of a statute or ordinance is effectuated and where the court can conclude to its satisfaction that the provision would have been enacted if the portion which is illegal had been omitted. There is nothing to warrant the assumption that whilst the board of alderman clearly had in mind the regulation of the express business in enacting sections 305, 306, 333, 374 and 379, as authorized by section 51 of the Greater New York Charter, it had in mind an entirely different purpose and intent and was exercising an essentially different power under a different section of the Charter (50) in enacting sections 307, 308, 315, 330, 331 and 332 of the very same ordinance. It does not at all follow that the board of aldermen would have enacted the latter sections if it had appreciated that the main purpose or intent of its plan was beyond its power as to interstate express companies although fully within its power as to local expressmen. The court below, in enforcing these latter sections as against interstate express companies, gave effect to what was concededly incidental to the main purpose which had wholly failed as to interstate

expressmen although remaining in full force and effect as to intrastate expressmen.

Taking the scheme of the ordinance as an entirety, it must be manifest, if we may repeat for the sake of emphasis the argument under point I, that it was intended to be a regulation of business. From section 305, which reads, "the following businesses must be duly licensed as herein provided," down to section 379, which speaks of "this ordinance" and of "any person engaging in or carrying on any business herein regulated without a license therefor" the board of aldermen is plainly dealing with businesses and not with the use of the streets. All the sections fit into a general scheme of business regulation. It cannot be that such an ordinance, thus showing on its face an intention to regulate business, can fail in that fundamental purpose as to interstate express carriers but nevertheless be sustained "simply because it embraces elements that it might have reached if it had been drawn with a different measure and intent."

If all the sections of "this ordinance," to quote the legislative language, are valid as to expressmen not engaged in interstate commerce and as to them constitute an entire scheme and a valid regulation of their local express business, it is difficult to perceive how logically part of this entire scheme can be torn from its context and separated from the rest, and then upheld as to interstate expressmen on the theory that the separated part was not intended as a regulation of business at all but as a regulation of the use of the streets and a protection to other users of the streets.

This court has repeatedly pointed out the limit of the

rule of severability and the danger of attempting to enforce part of a statute or ordinance, and thus make by judicial construction an enactment which the particular legislative body did not make and might not be willing to make if the matter were again before that body. *Trade-Mark Cases*, 100 U. S. 82, 99; *Allen* v. *Louisiana*, 103 U. S. 80, 83; *Poindexter* v. *Greenhow*, 114 U. S. 270, 304; *California* v. *Pacific Railroad Co.*, 127 U. S. 1, 29; *Baldwin* v. *Franks*, 120 U. S. 678, 685; *Pollock* v. *Farmers' Loan & Trust Co.*, 158 U. S. 601, 635; *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S. 540, 565; *United States* v. *Ju Toy*, 198 U. S. 253, 262; *Illinois Central R.R. Co.* v. *McKendree*, 203 U. S. 514, 529; *Hatch* v. *Reardon*, 204 U. S. 152, 160; *Employers' Liability Cases*, 207 U. S. 463, 501; *El Paso & N. E. Ry.* v. *Gutierrez*, 215 U. S. 87, 97; *International Textbook Co.* v. *Pigg*, 217 U. S. 91, 113; *Oklahoma* v. *Wells, Fargo & Co.*, 223 U. S. 298, 302; *Butts* v. *Merchants Transpn. Co.*, 230 U. S. 126, 133. As Mr. Justice Holmes recently said in *Oklahoma* v. *Wells, Fargo & Co.*, 223 U. S. 298, 302:

> "But we see no possible construction on which it [the statute] could be upheld without being so remodeled that it would be a mere speculation whether the legislature would have passed it in the new form. . . . Neither the court below nor this court can reshape the statute simply because it embraces elements that it might have reached if it had been drawn with a different measure and intent."

V.

If the ordinance in question had been expressly drawn as a regulation of the use of the streets of the City of New York under section 50 of the Greater New York charter, it would nevertheless be invalid.

When such a legislative body as the board of aldermen of the City of New York undertakes to enact an ordinance under a specific section (50) of the Charter, which it intends shall operate as a regulation of the use of the streets of the City by vehicles, it is surely reasonable to expect to find on the face of that ordinance, or from its essential nature, that it is a regulation of such use. No such indication will be found in the ordinance now before the court. On the contrary, the only indication given by the board of its purpose or intent or the nature of the power which it was exercising is its declaration at the outset that it is dealing solely with a "business requiring a license" and "the granting and regulation of licenses."

Reference to section 50 of the Greater New York Charter, printed in the appendix, will show that it grants power to regulate the use of streets by foot passengers, animals or vehicles, and to regulate the speed of vehicles and the running of stages, omnibuses, trucks and cars, but that it does not grant any power whatever to require licenses for the use of the streets or to exact license fees or bonds for the privilege of using the streets. The ordinance now before the court in no sense regulates the use of the streets by vehicles or the speed of vehicles or the running of trucks. Not one word will be found covering any such subject. The requirement of a certificate of

two residents of the City testifying as to the competence of a driver (section 315) is silent as to the qualifications required and is as applicable to competence as an expressman as to competence as a driver. The Greater New York Charter in numerous instances deals with the subject of licenses and license fees, but it is entirely silent as to licenses or license fees for the privilege of using the streets of the City.* It has always been assumed that the board of aldermen could not exact a license fee for the use of the streets by any class of the public having the right to use the same. *City of New York* v. *N. Y. City R. Co., No. 1*, 138 App. Div. 131, 136; affirmed 203 N. Y. 593; *City of Chicago* v. *Collins*, 175 Ill. 445, 454; *Harder's Storage Co.* v. *Chicago*, 235 Ill. 58, 84.

The statute (section 50 relating to streets and their use) further provides as follows:

> "The board of aldermen shall not pass any special ordinance in relation to any of the matters mentioned in this section. All ordinances in relation thereto shall be general ordinances which may either apply throughout the whole city or throughout specified portions thereof, and shall provide for the enforcement thereof as specified in section forty-four of this act as amended," which provides for enforcement "by such fines, penalties, forfeitures and imprisonment as may by ordinance or by law be prescribed."

The present ordinance singles out a class or a few classes of users of the streets—a very small minority of such users—and requires them not only to be licensed and to pay license fees for the privilege of driving on the streets of the City of New York, but denies that privilege to all persons in this class who are not citizens or have not declared their intention to become citizens. The proofs show, and it is un-

*See, *e. g.*, secs. 50, 51, 343, 347, 348, 766 and 1472.

disputed, that the wagons of the express companies do not differ in character from innumerable other vehicles constantly using the streets of the City under identically the same conditions. The wagons of the express companies are in all their essential parts similar to those used by the department stores, retail grocers, dry goods merchants, etc.; and the total number of express wagons using the streets of the City of New York is only about one-twentieth of the number of unlicensed wagons of similar kind to be found similarly using the streets. Indeed, it was expressly stipulated (fol. 259) that the number of vehicles of all sorts required to be licensed under this ordinance constitutes but a small proportion of the total traffic in the street. The ordinance, therefore, is plainly special and not general, and as such violates the requirement of section 50 of the Charter, and in this respect fortifies the argument that the enactment was not under section 50 but under section 51 conferring power to regulate special businesses. The learned court below recognized this glaring inequality as follows (p. 180):

> "Obviously the ordinance is not of universal application; it does not require the drivers of all vehicles to be licensed after a certification as to competency. No doubt it would be a great boon to pedestrians who have to use the streets if such a measure of protection against reckless driving were secured to them, but this ordinance does not go to any such length. It deals only with a relatively small class of drivers. As we have seen the only carts which are required to be licensed are those used by their owners to transport the goods of other persons for pay (section 510). Inasmuch as all licensed vehicles are required to be conspicuously marked, a few hours' walk through the business thoroughfares of the city will give some idea of the relatively small

number of vehicles which are within the terms of the ordinances. All carts and trucks used by wholesale dealers, by building contractors, breweries, department stores and in a host of other employments—some of them of larger size and a greater menace than any operated by public cartmen or expressmen—are wholly without the purview of this ordinance."

But aside from the requirement of section 50 of the Greater New York Charter, requiring all ordinances for the regulation of the use of the public streets to be general and not special, it is submitted that the present ordinance conflicts with the prohibition of the Fourteenth Amendment that no state shall deny to any person the equal protection of the laws. As Mr. Justice Day said in the very recent case of *Barrett* v. *Indiana*, 229 U. S. 26, 29:

"The equal protection of the laws requires laws of like application to all similarly situated."

A law which applies only to one-twentieth of those using the streets with the same kind of vehicles in identically the same manner and to the same extent as the remaining nineteen-twentieths cannot possibly in any aspect be deemed a law of like application to all similarly situated. Nor can a law be deemed equal as to persons, within the sense of the constitutional mandate, which excludes resident aliens from its protection and declares, as in the case at bar, that they shall not be permitted to be licensed as drivers of wagons used in interstate commerce. Such a law is neither equal nor just and, in the constitutional sense, is purely arbitrary and discriminatory. The large number of aliens in the City of New York renders this provision particularly harmful.

It surely cannot at this date be necessary to cite the numerous cases in which this court has declared that aliens

are persons and entitled to the protection of equal laws, and that a law which does not apply to all alike under identical conditions is a violation of the guaranty of the equal protection of the laws. Mr. Justice Day, speaking for the court in *Southern Railway Co.* v. *Greene*, 216 U. S. 400, 417, among other things said:

> "While reasonable classification is permitted, without doing violence to the equal protection of the laws, such classification must be based upon some real and substantial distinction, bearing a reasonable and just relation to the things in respect to which such classification is imposed; and classification cannot be arbitrarily made without any substantial basis. Arbitrary selection, it has been said, cannot be justified by calling it classification. *Gulf, Colorado & Santa Fe Ry.* v. *Ellis*, 165 U. S. 150, 155, 165; *Cotting* v. *Kansas City Stock Yards Co.*, 183 U. S. 79; *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S. 540, 559."

So far as the use of the public streets of the City of New York is concerned, the classification of express drivers in a separate class is purely capricious and arbitrary. The evidence conclusively shows that a driver of an express wagon uses the streets in no different manner from the driver of a similar wagon belonging to a grocer or a butcher or a department store or a dry goods merchant. No reason springing from or in any way suggested by the use of the public street can be pointed out for discriminating between them and placing them in a special class of licensed drivers. If the public is to be protected against unskilful and reckless driving, all similarly situated and driving similar wagons and similarly using the public streets under like conditions, should be included in the regulation. This court pointed out in the familiar case of *Gulf, Colorado & Santa Fe Ry.* v. *Ellis*,

165 U. S. 150, 165, "that the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth Amendment, and that in all cases it must appear not only that a classification has been made, but also that it is one based upon some reasonable ground—some difference which bears a just and proper relation to the attempted classification—and is not a mere arbitrary selection."

The suggestion made below by counsel for the City of New York that express wagons differ from other wagons in their use of the public streets in that they frequently have to stop and stand upon the streets and at times move very slowly, does not create any differences warranting the attempted classification. These characteristics, if true, might afford reason for an ordinance regulating speed or imposing a limit upon the time any wagon might stand in front of any one building, but would not warrant imposing a license fee for using the streets and exacting it only from a small class of users. It will, of course, be difficult for the court to perceive how the cause of public safety upon the public streets of a city could be advanced by requiring that drivers of slowly moving vehicles should be licensed whilst drivers of rapidly moving vehicles—certainly a greater menace to pedestrians and property upon the streets—were exempted from such requirement. As matter of fact, however, there is no proof before the court that would warrant the finding that express wagons occupy more of the public streets and move about more slowly than other wagons, such as the innumerable delivery wagons

of bakers, butchers, grocers, department stores, dry good merchants and others which make deliveries from door to door.

VI.

As to the police power of the several states.

It is true that this court has sustained the power of the states, in the absence of action and regulation by Congress, to enact reasonable police regulations and legal sanctions which indirectly affected interstate commerce. Examples of such state legislation will be found in such familiar cases as *Smith* v. *Alabama*, 124 U. S. 465; *Nashville etc. R. Co.* v. *Alabama*, 128 U. S. 96; *Western Union Telegraph Co.* v. *James*, 162 U. S. 650; *Chicago etc. R. Co.* v. *Solan*, 169 U. S. 133; *Pennsylvania R.R. Co.* v. *Hughes*, 191 U. S. 477; *Martin* v. *Pittsburg etc. R.R. Co.*, 203 U. S. 284; *Atlantic Coast Line R.R.* v. *Mazursky*, 216 U. S. 122; *Western Union Tel. Co.* v. *Milling Co.*, 218 U. S 406, and *Western Union Tel. Co.* v. *Crovo*, 220 U. S. 364.

In each of these cases, however, the provision in question related either to a subject not yet covered by any legislation of Congress, or created a sanction to secure the performance of the legal duties of common carriers. Many of these regulations belonged to that large class which it is competent for a state to make in the absence of legislation by Congress, but which are superseded as soon as Congress asserts its right to exercise exclusive power and to introduce uniform regulations (*Adams Express Company* v. *Croninger*, 226 U. S. 491, 500; *Kansas City*

Southern Ry. v. *Carl*, 227 U. S. 639, 649); and we have seen how comprehensive is the action of Congress in respect of the interstate express companies. Most of the remaining cases merely imposed additional sanctions and liabilities for acts done or omitted in order to compel and secure the performance of the public service companies' natural duties in respect of such matters as negligence, failure promptly to deliver messages, etc.

Without attempting to discuss and distinguish the numerous cases cited on behalf of the defendants, it is deemed sufficient to state with confidence that no decision since *Crutcher* v. *Kentucky*, 141 U. S. 47, sustains the proposition that a state may require a license fee to be paid, a license obtained, or a bond given for the privilege of conducting in that state any essential part of the interstate business of a common carrier. The uniform holding, even before the Interstate Commerce Act and related legislation, has been that such a state law is unconstitutional "no matter how specious the pretext may be for imposing" the license requirement.

If the City of New York may require "every vehicle of whatever construction" belonging to interstate carriers and every driver employed by them to be licensed, so may every city, town and village throughout the country. We cannot repeat this thought too often. If the City of New York may require bonds to be given at the rate of $100 or more for each vehicle belonging to or used by a common carrier, so may every other city, town and village. If such license fees and bonds can be exacted from the interstate express companies before they will be permitted to carry on interstate commerce, then the same principle must be ap-

plicable to all interstate carriers, and similar license fees and bonds can be exacted from all the interstate railroad, telegraph and telephone companies.

The leading case of *Crutcher* v. *Kentucky* involved the alleged exercise of the local police power and may be taken as typical and illustrating the point now being discussed. The argument there was that the requirements of the statute and the imposition of the license fee upon interstate express companies constituted a mere local police regulation and not an interference with interstate commerce, because they were aimed in good faith at securing for the people of Kentucky honest and responsible express service; but the statute was unqualifiedly condemned by this court on the ground that it was unconstitutional. See also *Western Union Tel. Co.* v. *Kansas*, 216 U. S. 1; *International Textbook Co.* v. *Pigg*, 217 U. S. 91; *Buck Stove Co.* v. *Vickers*, 226 U. S. 205. Take another leading case, that of *Smith* v. *Alabama*, 124 U. S. 465, which indisputably involved a police regulation. There an act of the state legislature requiring locomotive engineers to be examined and licensed was upheld because it affected interstate commerce only indirectly, incidentally and remotely; but the enactment did not require the railroad to take out a license for the privilege of carrying on the business of interstate transportation or to give a bond for each locomotive or car. If, in the case at bar, the ordinance had prohibited any one from driving a wagon in the City of New York "without first undergoing an examination and obtaining a license" as in the Alabama case, an entirely different question would be presented. In that suppositious case, if the prescribed qualifications for driving were reasonable

and impartially administered in respect of all similarly using the streets, they might be upheld as legitimate police regulations intended to secure the safety of the public streets, and as such applicable alike to all driving on the streets whether engaged in local or interstate commerce. But in the ordinance now before the court, no qualifications whatever are prescribed, and neither in its language nor in its practical administration is there the slightest standard by which any court can say that the regulations were or were not appropriate to a police regulation or for the protection of the public streets. No regulation so indefinite has ever been before the court or has ever been sustained as a reasonable and appropriate exercise of police power, and none which made the competence of those to be licensed wholly dependent upon the mere fact of citizenship or declaration of intention to become a citizen and the certificate of two residents. There is absolutely no requirement in the ordinance as to age or experience or physical health. Section 315 requiring a certificate as to "competence" is silent as to the nature of such competence, and in view of the subject matter and context may reasonably be interpreted as referring only to competence as an expressman and not at all to competence as a driver. Similarly there is no provision in the ordinance that at all refers to or regulates the size, weight, condition, state of repair or any other physical characteristic of the vehicles required to be licensed.

It was urged by the City of New York in the court below that the validity of the ordinance must be determined as though it had been enacted by the state legisla-

ture. We so concede. Assuming that the legislature had passed this very ordinance and had provided that interstate carriers such as express companies or railroads should take out a license for "every vehicle of whatever construction" belonging to them and should pay a license fee of $5 and give a bond of $100 for every such vehicle used in interstate commerce, can there be any doubt that such a law would be unconstitutional as a regulation of interstate commerce?

Or assuming that the legislature had enacted in the very language of this ordinance that drivers of vehicles owned by interstate carriers and used in the collection and delivery of interstate shipments must be citizens, and should not be licensed or permitted to use the public streets of any city, town, or village throughout the State unless the wagons they drove were licensed and bonded, whilst all other drivers, that is, nineteen-twentieths of those similarly using the streets, were exempted, would not such a law be unequal and plainly deny to interstate carriers the equal protection of the laws?

On the other hand, if the legislature had provided for examination and investigation as to age, experience and physical condition and had required all in the same class (*e. g.*, all drivers of automobiles or all drivers of vehicles drawn by horses) to submit to examination and to be licensed, we should then have a general police regulation fairly appropriate to securing safety of limb and life on our highways and reasonably within the local police power. Such a law impartially administered might be upheld within the doctrine of *Smith* v. *Alabama*; but the present enactment is not such a law.

The court will not fail to note that a different question

would be presented if the ordinance before it were general and not special—if on its face it sought to secure safe and competent drivers—if it did not exact a license fee and a bond for the privilege of using the public streets for a legitimate business—and if it did not attempt to exclude those persons who were not citizens from the use of the streets. The express companies need not challenge the power of the legislature directly or through the board of aldermen to regulate the use of streets by vehicles and to require that drivers of all business vehicles shall be of a certain age and be otherwise competent to drive horses or power vehicles. Such an ordinance, general, reasonable and fair in its provisions, might be valid if it did not directly interfere with interstate commerce. But under such an ordinance, the business of the express companies would not be so completely at the mercy of its employees as it is or would be today under the operation of the existing ordinance. A general ordinance requiring all drivers of similar vehicles to be licensed would increase the number of available licensed drivers twenty-fold and would include resident aliens of whom there are such a very large number in all our cities. Instead of creating a limited class of specially licensed express drivers, who by combining and striking at any time could paralyze the commerce of a great city, as in the case at bar, practically every competent driver in the City would be available as an express driver for immediate service in any emergency. The position of the express companies would have been very different in November, 1910, during the strike of their employes if they could have appealed to such a large class of licensed drivers. But even then the inability to

utilize their employes in other cities and transfer them to New York because they were not licensed, might at any time of strike and intimidation of New York residents render it practically impossible for the interstate express companies to handle traffic in or through any one of the innumerable cities of the country which saw fit to adopt a similar ordinance. Therefore, it should be sufficient to consider and condemn the particular ordinance before the court, reserving for future consideration and adjudication the question of the validity of an appropriate ordinance impartially applicable to all drivers of vehicles in a city when sought to be enforced against those engaged in interstate commerce.

It should be observed that the power to require the word "express" or any abbreviation and a number to be placed on express-wagons or any other similar requirement, such as registry, etc., is not challenged. Such provisions would in no way unreasonably interfere with the freedom of interstate commerce. The controversy is as to the right to require licenses and bonds and the payment of license fees as conditions precedent to the conduct of the express business "within or through" the City of New York.

VII.

The right to relief in equity.

It was contended by the defendants below that the trial court, as a court of equity, had no jurisdiction to enjoin criminal prosecutions which the defendants had brought or threatened to bring for violations of the ordinance, and that the Adams Express Company would suffer no

irreparable damage, inasmuch as it could pay the license fees and give the bonds under protest and thereby avoid all the consequences occasioned by its refusal to pay. This argument disregarded the uncontradicted evidence as to the difficulty of securing licensed drivers on short notice and also disregarded the fact that the ordinance excluded from license all drivers who were not citizens or had not declared their intention to become citizens however competent they might be. It further disregarded the fact that the burden of giving bonds annually aggregating $40,000 was not measurable by money damages.

Familiar authorities furnish a ready reply to the defendants' objections. *Osborn* v. *U. S. Bank*, 9 Wheat. 738, 838; *Ex parte Young*, 209 U. S. 123, 161; *Ludwig* v. *West. Un. Tel. Co.*, 216 U. S. 146; *Western Un. Tel. Co.* v. *Andrews*, 216 U. S. 165; *United States Express Co.* v. *Hemmingway*, 39 Fed. 60; *Postal Telegraph-Cable Co.* v. *City of Mobile*, 179 Fed. 955, 960; *Simpson-Crawford Co.* v. *Borough of Atlantic Highlands*, 158 Fed. 372; *City of Hutchinson* v. *Beckham*, 118 Fed. 399; *Jewel Tea Co.* v. *Lee's Summit, Mo.*, 198 Fed. 532; *Southern Express Company* v. *Mayor of Ensley*, 116 Fed. 756, 761; *Kansas City Gas Co.* v. *Kansas City*, 198 Fed. 500, 510, and *Southern Ry. Co.* v. *City of Asheville*, 69 Fed. 359, 360, 361.

The case at bar is much stronger than any of the cases cited. If the City of New York were now to enforce the ordinance against the Adams Express Company, it would mean that all of the company's drivers and helpers—about eight hundred—would be arrested; and, of course, a separate proceeding would be required to determine the guilt or innocence of each driver. It would mean theoreti-

cally that the City could begin eight hundred suits against the company to recover a penalty with respect to each of these violations, and also that it could bring four hundred actions to recover for violations committed in using without licenses that number of express wagons. Under these circumstances, it cannot be doubted that the present suit avoids a multiplicity of actions.

The occurrences during the recent strike, which are detailed in the record and summarized in the above statement, furnish ample illustration of the irreparable character of the loss and damage and of the unavoidable multiplicity of legal proceedings which the enforcement of the ordinance must necessarily bring upon the company.

It ought always to be borne in mind that if the City of New York can compel the Adams Express Company to pay between two and three thousand dollars per annum as license fees for its wagons, drivers and helpers, and annually give bonds of $100 for each of its 400 wagons, or $40,000 in the aggregate, for the privilege of conducting its interstate business, the City may increase the fees and bonds at discretion, and that it would be an extremely difficult and delicate task for a court to say that the power, if it exists, had been abused. If New York City may exact license fees and bonds, so may each of the cities, towns and villages in and through which the express companies of the country do business, and an enormous burden can thereby be cast upon the business of interstate express carriers. These exactions might readily amount to a very large sum annually. The power to exact license fees and bonds is a power so akin to taxation that it may readily be used to destroy, or, at least, certainly to impede. Con-

ceding *arguendo* that the question of irreparable damage is doubtful—although it is difficult to perceive how this can be held on the present record—nevertheless is it the law that a court of equity must say to a litigant, who is clearly guaranteed by the Constitution of the United States absolute freedom in the conduct of his interstate business, that he must submit to all exactions, pay whatever is demanded and give any bond prescribed for the privilege of engaging in interstate commerce, because he can sue the officer compelling the payment, and recover at law the money paid and damages, perhaps only after years of litigation? Rights which are inviolate under the supreme law of the land ought not to be denied or impaired for however short a period. A ruling that the only remedy is at law would deny adequate and complete relief, and would be not only a reproach to any system of procedure, but would fritter away a constitutional guaranty of supreme importance and deprive the carriers of the whole country of reasonable and necessary protection. It would be adhering to the letter and disregarding the spirit of the equity rule. The vivifying principle of equity jurisdiction and procedure in such cases ever has been to grant relief because the remedy at law to sue to recover unlawful exactions or damages would be plainly inadequate and incomplete. It may be true that the Adams Express Company can afford to pay the present exaction in one or a few cities, but if similar licenses and bonds are required in the innumerable cities, towns and villages in which it does business, numbering six thousand, the burden may become too great and all its available working capital may be tied up in payments and in securing bonds.

But take the case of the smaller and poorer expressmen engaged in interstate commerce: the necessity for making payments under protest and tying up a large amount of their working capital in bonds might practically deny them the right to engage in interstate commerce. No court of equity has yet announced that relief by injunction will be denied if it thinks the complainant can afford to pay under protest, but will be granted if such a payment would be too burdensome or prohibitive in the case of those of limited means. The only sound rule is that states and municipalities cannot be permitted unduly to interfere even temporarily with interstate commerce by exacting license fees or bonds for the privilege of engaging in interstate commerce and carrying on interstate business. That privilege is a national right guaranteed to all by the Constitution of the United States; it is the most essential and beneficient of all our national rights, and its free exercise ought not to be permitted to be interfered with in the manner now complained of.

CONCLUSION.

For these reasons it is submitted that it should be adjudged that the ordinance in question is void as to interstate express carriers because interfering with the freedom of interstate commerce, and that the decree of the court below should be reversed in so far as it denied relief to the complainant.

New York, November 6, 1913.

WILLIAM D. GUTHRIE,
Of counsel for the Adams Express Company.

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SUPREME COURT, U. S.
FILED
NOV 10 1913
JAMES D. MAHER
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1913.

Nos. 88 and 84.

WILLIAM M. BARRETT, as President of the Adams Express Company, etc.,
Appellant,

v.

THE CITY OF NEW YORK, *et al.*,
Appellees.

THE CITY OF NEW YORK, *et al.*,
Appellants,

v.

WILLIAM M. BARRETT, as President of the Adams Express Company, etc.
Appellee.

CROSS APPEALS FROM THE UNITED STATES CIRCUIT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

APPENDIX TO BRIEF OF THE ADAMS EXPRESS COMPANY.

NOVEMBER, 1913.

WILLIAM D. GUTHRIE,
Counsel for Adams Express Company.

Supreme Court of the United States.

OCTOBER TERM, 1913. Nos. 83 and 84.

WILLIAM M. BARRETT, as President of the Adams Express Company, etc.,

Appellant,

v.

THE CITY OF NEW YORK, *et al.*,

Appellees.

THE CITY OF NEW YORK, *et al.*,

Appellants,

v.

WILLIAM M. BARRETT, as President of the Adams Express Company, etc.,

Appellee.

CROSS APPEALS FROM THE UNITED STATES CIRCUIT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

APPENDIX.

THE GREATER NEW YORK CHARTER AS AMENDED.

ORDINANCES; POLICE, HEALTH, PARK, FIRE AND BUILDING REGULATIONS; EXCEPTIONS.

§ 43. The board of aldermen shall have power to make, establish, alter, modify, amend and repeal all ordinances, rules, and police, health, park, fire and building regulations, not contrary to the laws of the state, or the United States, as they may deem necessary to carry into effect the powers conferred upon The City of New York by this act, or by any other law of the state, or by grant; and such as they may deem necessary and proper for the good government, order and protection of persons and property, and for the preservation of the public health, peace

and prosperity of said city, and its inhabitants, except so far as power is conferred by this act upon presidents of boroughs, the police, health, park and fire departments respectively to make rules for the government of the persons employed in and by said departments. Nothing in this section contained shall be construed to impair the powers conferred by this act upon the department of education; and except so far as the legislative power respecting the health, police, park, fire and building departments shall be conferred upon said departments respectively by the provisions of this act, and except that any modification of the existing rules, regulations and ordinances affecting any of the departments and all ordinances to be passed to govern the board of public improvements or any of the departments thereof, must originate with the department concerned, or with said board, and must be adopted or rejected by the board of aldermen without amendment. But nothing in this section or this act contained shall be construed to impair the power or control conferred by this act upon the board of estimate and apportionment with respect to the streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, docks, bulkheads, wharves, piers and all public grounds and waters which are within or belong to the city.

"ENUMERATION OF POWERS OF BOARD OF ALDERMEN NOT RESTRICTIVE; GENERAL POWERS; EXCEPTIONS.

§ 44. No enumeration of powers in this act shall be held to limit the legislative power of the board of aldermen except as in this act specifically provided and the board of aldermen in addition to all enumerated powers may exercise all of the powers vested in The City of New York by this act, or otherwise, by proper ordinances, rules, regulations and by-laws not inconsistent with the provisions of this act, or with the constitution or laws of the United States or of this state; and, subject to such limitations, may from time to time ordain and pass all such ordinances, rules, regulations and by-laws, applicable throughout the whole of said city or applicable only to specified portions thereof, as to the said board

of aldermen may seem meet for the good rule and government of the city, and to carry out the purposes and provisions of this act or of other laws relating to the said city, and may provide for the enforcement of the same by such fines, penalties, forfeitures and imprisonment as may by ordinance or by law be prescribed."

BOARD OF ALDERMEN TO REGULATE USE OF STREETS; BUT NOT SO AS TO AFFECT FRANCHISES.

§ 50. Subject to the constitution and laws of the state, the board of aldermen shall have power to regulate the use of streets and sidewalks by foot passengers, animals or vehicles; to regulate the speed at which vehicles shall be driven or ridden and at which vehicles shall be propelled in the streets; to regulate processions or parades occupying or marching upon any street; to prevent encroachments upon and obstructions to the streets and to authorize and require their removal by the proper officers; to regulate the opening of street surfaces for purposes authorized by law; to regulate the numbering of houses and lots in the streets and the naming of streets, except that it shall not be lawful to number or renumber any houses or to change the name of any street save between the first day of December in any year and the first day of May next ensuing; to regulate and prevent the throwing or depositing of ashes, garbage or other filth or rubbish of any kind upon the streets; to regulate the use of the streets for signs, signposts, awnings, awning posts, horse-troughs, urinals, posts for telegraph or other electric wires, and other purposes; to regulate street pavements, crosswalks, curbstones, gutter-stones and sidewalks; to provide for regulating, grading, flagging, curbing, guttering and lighting the streets; to regulate public cries, advertising noises, steam whistles, and ringing bells in the streets; to regulate the exhibiting of banners, placards or flags in or across the streets or from houses or other buildings; to regulate the exhibition of advertisements or hand-bills along the streets; and to make all such regulations in reference to the running of stages, omnibuses, trucks and cars as may be necessary for the convenient use and the accommodation of the streets,

piers, wharves or stations. Whenever the word 'street' or the plural thereof occurs in this section in shall be deemed to include all that is included by the terms 'street, avenue, road, alley, lane, highway, boulevard, concourse, public square and public place,' or the plurals thereof respectively. Whereever the word 'vehicle' or the plural thereof occurs in this section it shall be deemed to include wagons, trucks, carts, cabs, carriages, stages, omnibuses, motors, automobiles, locomobiles, locomotives, bicycles, tricycles, sleighs or other conveyances for persons or property. The board of aldermen shall not have power to authorize the placing or continuing of any encroachment or obstruction upon any street or sidewalk, except the temporary occupation thereof during the erection or repairing of a building on a lot opposite the same, nor shall they permit the erection of booths and stands within stoop lines, except for the sale of newspapers, periodicals, fruits and sodawater, and with the consent in such cases of the owner of the premises. The board of aldermen shall not pass any special ordinance in relation to any of the matters mentioned in this section. All ordinances in relation thereto shall be general ordinances which may either apply throughout the whole city or throughout specified portions thereof, and shall provide for the enforcement thereof as specified in section forty-four of this act as amended. Nothing herein contained shall be construed to prevent the board of aldermen from providing by special ordinance for the erection or maintenance on the streets or waters within The City of New York of fountains, public comfort stations, urinals, public baths, or other like structures maintained by the public authorities; for the establishment of which the said board is hereby empowered to provide. All general ordinances relating to authorized structures, encroachments or obstructions in or upon the streets or sidewalks by persons other than the authorities of The City of New York, or other public authorities, shall fix a definite license fee for every such authorized structure, encroachment or obstruction, according to the character, extent and duration thereof, and shall provide for the issuing of revocable licenses therefor, which shall be ac-

cording to an established form and shall be regularly numbered and duly registered as shall be prescribed by the board of aldermen. But no ordinance hereafter adopted or power hereafter exercised by the board of aldermen shall limit, apply to or affect any franchise, grant, contract or resolution in the nature of a franchise hereafter made, approved or authorized by the board of estimate and apportionment as in this act provided, or by the board of rapid transit railroad commissioners of The City of New York."

BOARD OF ALDERMEN; LICENSING AND REGULATING CERTAIN TRADES OR BUSINESS; DOG LICENSES, ETC.

§ 51. Subject to the constitution and laws of the state, the board of aldermen shall have power to provide for the licensing and otherwise regulating the business of dirt carts, public cartmen, truckmen, hackmen, cabmen, expressmen, car-drivers and boatmen; of boot-blacks; of pawn brokers, junk-dealers, keepers of intelligence offices, dealers in second-hand articles, hawkers, peddlers, vendors and scalpers in coal freights; of menageries, circuses and common shows; of bone boiling, fat rendering and other noxious businesses; and shall have power to regulate or forbid the keeping of dogs. The board of aldermen shall also have power to regulate the rates of fares to be taken by owners or drivers of hackney coaches, carriages, motors, automobiles or other vehicles, and to compel the owners thereof to pay annual license fees. All ordinances in relation to any of the matters mentioned in this section shall be general, shall provide for the enforcement thereof in the manner specified in section forty-four of this act as amended, and shall fix the license fees to be paid, if any. All licenses shall be according to an established form, and shall be regularly numbered and duly registered as shall be prescribed by the board of aldermen.

CODE OF ORDINANCES OF THE CITY OF NEW YORK*
approved November 8, 1906
containing
All general ordinances in force January 1, 1910
together with
All ordinances and amendments passed from
January 1, 1906, to January 1, 1910
compiled and annotated by
ARTHUR F. COSBY
formerly assistant corporation counsel.

CHAPTER 7.

TITLE I.—BUREAU OF LICENSES.

§ 300. There shall be a Bureau of Licenses in and for The City of New York attached to the Mayor's office, with a principal office in the City Hall in the Borough of Manhattan, and a branch office in such other boroughs as may be deemed necessary and be designated by the Mayor of said city, for the purpose of issuing and recording all licenses authorized by resolution or ordinance of the Board of Aldermen or now in force in any part of said city. (Ord. app. Feb. 8, 1898, sec. 1, with verbal changes.)

§ 301. The Bureau of Licenses shall consist of a Chief of said Bureau, with such deputies and assistants as may be found necessary for properly carrying on the work of the Bureau, to be appointed and removed at pleasure by the Mayor of said city, and paid such compensation as shall be fixed and established by said Mayor. (Id., sec. 2.)

§ 302. All licenses issued by the Bureau of Licenses shall be according to an established form, printed with corresponding stub and regularly numbered, with suitable blank spaces for writing in the name and residence of the licensee, kind and class of license, location and privileges allowed, and amount of fee paid, all properly bound in book form. All such licenses shall be duly classified and recorded in suitable registers and fully indexed. (Id., sec. 3.)

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* Editions of this work are published annually, in which all the pertinent provisions of the ordinances in force in 1910 are identical, and a copy of this later edition has been filed in the library of the court.

§ 303. All licenses issued by the Bureau of Licenses shall be granted by the Mayor and duly issued upon regular application to the Bureau of Licenses. The registers of licenses shall be public records, and extracts may be certified by the Chief of the Bureau or the deputy or assistant in charge of a branch office, for use as evidence. (Id., sec. 4.)

§ 304. There shall be kept in the principal office of said Bureau and each and every branch office thereof a book recording consecutively each license as issued, showing its kind and class, whether new or renewed, name of licensee, regular number of blank form, and amount of fee received, day by day. A daily report showing all of above details shall be made by each branch office to the principal office. All moneys received each day shall be duly deposited in a designated city depository the following day. There shall also be kept in the principal office of said Bureau a book showing a statement of all licenses issued and fees received by said Bureau and its branches, tabulated by days, months and quarters of the year, and compiled annually. (Id., sec. 5.)

Title II.—The Granting and Regulation of Licenses.

Article I.—Business Requiring a License.

§ 305. The following businesses must be duly licensed as herein provided, namely, public cartmen, truckmen, hackmen, cabmen, expressmen, drivers, junk dealers, dealers in second-hand articles, hawkers, peddlers, venders, ticket speculators, coal scalpers, common shows, shooting galleries, bowling alleys, billiard tables, dirt carts, exterior hoists and stands within stoop-lines and under the stairs of the elevated railroad stations. (Ord. app. May 22, 1899, sec. 1.)

§ 306. No person shall engage in or carry on any such business without a license therefor under a penalty of not less than two dollars, nor more than twenty-five dollars for each offense, and for the purposes of this ordinance the term person shall include any human being or lawful association of such. (Id., sec. 2.)

Article II.—Licenses and License Fees.

§ 307. All licenses shall be granted by authority of the Mayor and issued by the Bureau of Licenses for a term of one year from the date thereof, unless sooner suspended or revoked by the Mayor, and no person shall be licensed except a citizen of the United States or one who has regularly declared intention to become a citizen.

The Mayor shall have power to suspend or revoke any license or permit issued under the provisions of this ordinance. The Mayor shall also have power to impose a fine of not more than five dollars or less than one dollar for any violation of the regulations herein provided, and to suspend the license pending payment of such fine, which, when collected, shall be paid into the sinking fund for the redemption of the city debt. (Id., sec. 3).

§ 308. The annual license fee shall be as below enumerated:

For each public cart or truck	$2.00
For each public hack coach	3.00
For each public hack cab	2.00
For each special hack coach	5.00
For each special hack cab	3.00
For each express wagon	5.00
For each junk shop dealer	20.00
For each dealer in second-hand articles	25.00
For each junk cart or boat	5.00
For each peddler using horse and wagon	8.00
For each peddler using push cart	4.00
For each peddler carrying merchandise	2.00
For each ticket speculator	50.00
For each coal scalper	250.00
For each common show	25.00
For each public shooting gallery	5.00
For each public bowling alley	5.00
For each public billiard table	3.00
For each dirt cart	1.00
For each general hoisting	25.00
For each special hoisting	1.00
For each fruit or soda water stand, or both	10.00
For each newspaper or periodical stand, or both, and in addition also fruit or soda water, or both	15.00

For each movable newspaper stand.....	1.00
For each newspaper and periodical stand, or both	5.00
For each chair of a bootblack stand.....	5.00
For each stand under elevated railroad stations	10.00
For each driver of any licensed vehicle.....	.50

(Id., sec. 4.)

§ 309. Any license, before its expiration or within thirty days thereafter, may be renewed for another term, upon payment of one-half the license fee above designated therefor.

All licenses in force when this ordinance takes effect for any business enumerated above may be renewed under the foregoing provisions regulating renewals of licenses hereunder issued. (Id., sec. 5.)

Article III.—Special Regulations and Rates.

I. Public Carts and Cartmen.

[§§ 310–314.]

II. Drivers of Licensed Vehicles.

§ 315. Every person driving a licensed hack, or express, shall be licensed as such driver, and every application for such license shall be endorsed, in writing, by two reputable residents of The City of New York, testifying to the competence of the applicant. No owner of a licensed hack or express shall employ an unlicensed driver under a penalty of ten dollars for each and every offense.

(Id., sec. 55, as amended by ordinance approved June 29, 1909.)

III. Public Hacks and Hackmen.

[§§ 316–326.]

IV. Public Hack Stands.

[§§ 327–329.]

IVa. Public Porters.

[§§ 329a—329k.]

V. Expresses and Expressmen.

§ 330. Every vehicle of whatever construction kept or used for the conveyance of baggage, packages, parcels and other articles within or through The City of New York for pay, shall be deemed a public express, and the owner

thereof shall be deemed a public expressman, and the term expressman shall be deemed to include any common carrier of baggage, packages, parcels or other articles within or through The City of New York. (Ord. app. May 22, 1899, sec. 18.)

§ 331. Every public express shall show on each outside thereof the word "Express" or the letters "Exp.," together with the figures of its official number. (Id., sec. 19.)

§ 332. Every owner of a public express shall give a bond to The City of New York for each and every vehicle licensed in a penal sum of $100, with sufficient surety, approved by the Mayor or Chief of the Bureau of Licenses, conditioned for the safe and prompt delivery of all baggage, packages, parcels and other articles or things entrusted to the owner or driver of any such licensed express (Id., sec. 20).

§ 333. The legal rates for regular deliveries, unless otherwise mutually agreed, shall be as follows in the city:

Between points within any borough—

Not more than five miles apart, each piece..... $0.40

Not more than ten miles apart, each piece..... 55

Not more than fifteen miles apart, each piece..... 75

Between points in different boroughs: One-half the above rates in addition.

Special deliveries at rates to be mutually agreed upon. (Id., sec. 21.)

VI. Junk Dealers.

[§§ 334–340.]

VII. Dealers in Second-Hand Articles.

[§§ 341–346.]

VIII. Peddlers.

[§§ 347, 348.]

IX. Ticket Speculators.

[§§ 349, 350. (Repealed, December 15, 1908.)]

X. Coal Scalpers.

[§ 351.]

XI. Common Shows.

[§ 352.]

XII. Shooting Galleries.

[§ 352.]

XIII. Bowling Alleys.

[§ 354.]

XIV. Billiard Tables.
[§ 355.]
XV. Dirt Carts and Cartmen.
[§§ 356, 357.]
XVI. Exterior Hoists.
[§§ 358–360.]

Article IV. Stands Within the Stoop Lines and Under Elevated Railroad Stations.
[§§ 361–372.]

TITLE 3.—GENERAL REGULATIONS AND COMPLAINTS.

§ 373. All license fees received by the Bureau of Licenses shall be regularly paid over to the City Treasury, except the license fees received from hackmen, dealers in junk and second-hand articles, and for stands within stoop-lines, which shall be paid into the Sinking Funds for the Redemption of the City Debt. (Ord. app. May 22, 1899, sec. 56.)

§ 374. The Mayor shall have power to appoint inspectors in the Bureau of Licenses to see that the provisions of this ordinance are fully and properly complied with; and all licensed vehicles and places of business shall be regularly inspected, and the result of such inspection shall be indorsed on the official license therefor, together with the date of inspection and the signature of the inspector, and all inspections shall be regularly reported to the Bureau of Licenses. (Id., sec. 57.)

§ 375. Every licensee shall have the official license and exhibit the same upon the demand of any person; and shall report within three days to the Bureau of Licenses any change of residence or place of business; and shall at all times perform the public duties of the business licensed when called upon so to do, if not actually unable. (Id., sec. 58.)

§ 376. All words, letters and numbers hereinbefore prescribed for licensed vehicles shall be shown permanently and conspicuously on each outside thereof in colors contrasting strongly with background, and not less than two inches high, as directed and approved by the Mayor or Chief of the Bureau of Licenses, and shall be kept legible and plainly visible at all times during the term of the license; and shall be obliterated or erased

upon change of ownership or expiration of the license; and no person shall have or use any vehicle with words, letters or numbers thereon like those herein prescribed for licensed vehicles without being duly licensed therefor. (Id., sec. 59.)

§ 377. Every licensed hackman, whenever with a hack or waiting for employment anywhere in The City of New York; every licensed peddler while peddling; every person while using a licensed junk cart or boat, and every licensed ticket speculator while acting as such, shall wear conspicuously on the left breast of the outer coat a metal badge, of a shape, size and style approved by the Mayor or Chief of the Bureau of Licenses, and furnished by said Bureau, having engraved or embossed thereon the official designation and number of the license, together with the words "New York City." (Id., sec. 60.)

§ 378. The Chief of the Bureau of Licenses, or Deputy Chief, shall have power to hear and determine complaints against licensees hereunder and impose a fine of not more than five dollars or less than one dollar for any violation of the regulations herein provided, subject to the approval of the Mayor, who shall have power to suspend the license pending payment of such fine. All such fines, when collected, shall be paid into the Sinking Fund for the Redemption of the City Debt. (Id., sec. 61.)

Title 4.—Violations.

§ 379. Except as hereinbefore otherwise provided, no person shall violate any of the regulations of this ordinance under a penalty of ten dollars for each offense. No such violation shall be continued under a penalty of one dollar for each day so continued. Any person engaged in or carrying on any business herein regulated without a license therefor, or any person violating any of the regulations of this ordinance, shall be deemed guilty of a misdemeanor, and upon conviction thereof by any magistrate, either upon confession of the party or competent testimony, may be fined not more than ten dollars for each offense, and in default of payment of such fine may be committed to prison by such magistrate until the same be paid; but such imprisonment shall not exceed ten days. (Id., sec. 62, as amended June 29, 1909.)

In the Supreme Court of the United States,

ON APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF NEW YORK.

William M. Barrett, as President of the Adams Express Company, individually and as a shareholder in the said company, suing on behalf of himself and all other members and shareholders of the said company,

Appellant,

against

The City of New York, William J. Gaynor, as Mayor of The City of New York, and James C. Cropsey, as Police Commissioner of The City of New York,

Respondents.

No. 83.

Respondents' Brief.

The appellant appeals from the Decree of the Circuit Court of the United States, Southern District of New York, entered on June 30, 1911, the Assignment of Errors being, in short, that the Court erred:

a. In denying a permanent injunction.

b. In refusing to hold that the Ordinances which are the subject of this controversy are

unconstitutional and void as an interference with interstate commerce.

c. In holding such Ordinances severable from certain other Ordinances "which it held "unconstitutional and void as an attempt to "regulate and interfere with interstate com- "merce."

d. In refusing to hold that so much of an Ordinance of The City of New York "as pro- "vided that any person engaging in or carry- "ing on the express business without a license "therefor shall be deemed guilty of a misde- "meanor," is unconstitutional and void.

e. In refusing to hold that certain Ordinances of The City of New York "constitute a "single and inseparable scheme of municipal "legislation whereby it is sought to regulate "and interfere with the interstate business of "the express companies."

f. In refusing to hold that certain Ordinances of The City of New York "constitute "an arbitrary and unlawful discrimination "against express companies, deny to them the "equal protection of the laws and deprive them "of their property without due process of "law" (pp. 188, 189).

Chief Judge Lacombe's opinion, delivered on the denial of the motion for a preliminary injunction, is reported, 183 Fed., 793.

The Pleadings.

The Amended Bill of Complaint, after setting up the necessary formal allegations, avers:

"IV.—The Adams Express Company is now, "and since its organization in the year 1854 "has been engaged in The City of New York

"and elsewhere in the business of interstate
"express as a common carrier of packages,
"parcels and other property between the sev-
"eral States under through bills of lading and
"at through rates. Said express business, by
"the necessities of commerce and the usages of
"those engaged in such transportation, has be-
"come known and recognized as distinct from
"the transportation of the large mass of
"freight usually carried by steamboats and
"railroads, and its object is to carry small and
"valuable packages rapidly and in such a man-
"ner as not to subject them to the risk of loss,
"damage or delay which would attend their
"transportation in company with heavy or
"bulky articles of commerce. The said Adams
"Express Company, in the conduct of its busi-
"ness, receives directly from shippers daily in
"The City of New York many thousands of
"small and separate packages for carriage and
"delivery to consignees at points and places
"in other States, and receives daily in other
"States many thousands of like packages for
"delivery to consignees in The City of New
"York, which packages contain merchandise,
"money, gold and silver bullion, jewels, deeds
"and other documents and papers, securities
"and other articles of great value, and also
"fruits, vegetables and other perishable ar-
"ticles, all of which require special care in
"transit in the charge of responsible agents and
"certainty and promptness of delivery. The
"number of interstate packages which the
"Adams Express Company carries to and from
"The City of New York averages more than
"seventy-five thousand daily. The said trans-
"portation of packages in interstate commerce
"to and from The City of New York is done
"by the Adams Express Company under the

"terms and conditions of a through bill of lad-
"ing, which it duly issues in each case as the
"contract of carriage, and at a through rate
"covering all services from the moment of re-
"ceipt until the moment of actual delivery to
"the consignee, including cartage in The City
"of New York. It also carries bonds, money
"and gold and silver bullion for the Govern-
"ment of the United States between New York
"and Washington, D. C. It transports all
"packages delivered to it by shippers in the
"custody of its own employees and agents, by
"its own wagons or in special railroad cars,
"and over railroads and by steamboats or other
"means of carriage specially provided by it,
"which instrumentalities form through routes
"for continuous transportation between the
"several States from shipper to consignee, and
"it delivers such packages directly to the con-
"signees at their residences, places of business
"or other designated addresses, or to connect-
"ing lines in case the consignees are beyond
"points reached by its own lines. Liability
"for loss, damage, or injury to property de-
"livered to and accepted by the said Company
"for interstate transportation, for which it
"has issued its bill of lading, is imposed by
"law upon it, whether such loss, damage or
"injury is caused by the Company during any
"part of the transportation or by any other
"carrier to which such property has been
"transferred for delivery.

"V.—The said Adams Express Company, as
"a common carrier, is subject to the provisions
"of the Act of Congress, approved February 4,
"1887, entitled '*An Act to regulate com-*
"'*merce*,' and the various acts amendatory
"thereof and supplemental thereto. By the

"said acts of Congress the Company is, among "other things, charged with the duty of pro- "viding and furnishing vehicles and all instru- "mentalities and facilities for the receipt, "shipment, transportation or delivery of "property upon reasonable request therefor, "and of establishing through routes and just "and reasonable rates applicable thereto, and "of filing with the Interstate Commerce Com- "mission and publishing schedules of rates, "which are subject to the approval and regula- "tion of the said Commission. The said ex- "press company carries on its interstate busi- "ness in the United States on the lines of "more than one hundred separate railroad "companies, besides steamboat and stage "lines; its interstate routes aggregate more "than thirty-six thousand miles in length, and "they extend into thirty States and the Dis- "trict of Columbia; it has established over the "said lines through routes, and has made and "filed with the Interstate Commerce Commis- "sion, and duly published, as required by law, "classifications and schedules of rates appli- "cable thereto, by which all of its interstate "business is governed, and it has duly com- "plied with all the requirements of the Inter- "state Commerce Act.

"VI.—The said Express Company is the "owner of a large number of horses and "wagons and other vehicles kept and used "by it in the many places in which it trans- "acts its business. In The City of New York "the said Company employs about two thous- "and men, and owns and uses about four hun- "dred and fifty wagons drawn by horses, re- "quiring the services of over four hundred "drivers, besides about ninety motor vehicles, "and all of these wagons and drivers are used

"and engaged in the interstate business of re-
"ceiving, transporting and delivering packages
"and articles shipped to or from or through
"other States. The said horses, wagons and
"other vehicles and the drivers thereof are
"necessary and indispensable instrumentali-
"ties of the Company in the transaction of its
"said interstate business, and without such
"horses, wagons and vehicles, and without
"drivers and other operators for the same, the
"transaction of the interstate business of the
"Company in The City of New York and other
"large cities would be impossible. The services
"rendered by said wagons and drivers in col-
"lecting and delivering packages in The City
"of New York are invariably part of the inter-
"state transportation and no separate charge
"is made therefor, but such services are in-
"cluded and absorbed in and covered by the
"through rate or charge aforesaid so duly
"made, filed and published in accordance with
"said Interstate Commerce Law.

"VII.—The Board of Aldermen of The City
"of New York, claiming to act under and by
"virtue of power conferred upon them by an
"act of the Legislature of the State of New
"York known as The Greater New York
"Charter, and particularly section 51 thereof,
"heretofore adopted a Code of Ordinances for
"The City of New York, and in and by chapter
"7 thereof, among other things, provided as
"follows:

"'Section 305. The following businesses
"'must be duly licensed as herein provided,
"'namely, public cartmen, truck men, hack
"'men, cab men, *express men*, drivers, junk
"'dealers, dealers in second hand articles,
"'hawkers, peddlers, venders, ticket specula-

" ' tors, coal scalpers, common shows, shooting
" ' galleries, bowling alleys, billiard tables, dirt
" ' carts, exterior hoists and stands within
" ' stoop lines and under the stairs of the ele-
" ' vated railroad stations.'

" ' Section 306. No person shall engage in
" ' or carry on any such business without a
" ' license therefor under a penalty of not less
" ' than two dollars, nor more than twenty-five
" ' dollars for each offense, and for the pur-
" ' poses of this ordinance the term person shall
" ' include any human being or lawful associa-
" ' tion as such.'

" ' Section 307. All licenses shall be grant-
" ' ed by authority of the Mayor and issued
" ' by the Bureau of Licenses for a term of one
" ' year from the date thereof, unless sooner
" ' suspended or revoked by the Mayor, and no
" ' person shall be licensed except a citizen of
" ' the United States or one who has regularly
" ' declared intention to become a citizen.'

" ' The Mayor shall have power to suspend
" ' or revoke any license or permit issued un-
" ' der the provisions of this ordinance. The
" ' Mayor shall also have power to impose a
" ' fine of not more than five dollars or less than
" ' one dollar for any violation of the regula-
" ' tions herein provided, and to suspend the
" ' license pending payment of such fine, which,
" ' when collected, shall be paid into the sink-
" ' ing fund for the redemption of the city
" ' debt.'

" ' Section 308. The annual license fee shall
" ' be as below enumerated:

" ' For each express wagon..... $5.'

" ' Section 315. Every person driving a li-
" ' censed hack, or express, shall be licensed

"'as such driver, and every application for
"'such license shall be indorsed, in writing,
"'by two reputable residents of The City of
"'New York testifying to the competence of
"'the applicant. No owner of a licensed hack
"'or express shall employ an unlicensed dri-
"'ver under a penalty of ten dollars for each
"'and every offense.'

"'Section 330. Every vehicle of whatever
"'construction, kept or used for the convey-
"'ance of baggage, packages, parcels and
"'other articles within or through The City
"'of New York for pay, shall be deemed a
"'public express, and the owner thereof shall
"'be deemed a public expressman, and the
"'term expressman shall be deemed to include
"'any common carrier of baggage, packages,
"'parcels or other articles within or through
"'The City of New York.'

"'Section 331. Every public express shall
"'show on each outside thereof the word "Ex-
"'"press," or the letters "Exp.," together
"'with the figures of its official number.'

"'Section 332. Every owner of a public
"'express shall give a bond to The City of
"'New York for each and every vehicle li-
"'censed in a penal sum of $100, with suffi-
"'cient surety approved by the Mayor or Chief
"'of the Bureau of Licenses, conditioned for
"'the safe and prompt delivery of all baggage,
"'packages, parcels and other articles or
"'things entrusted to the owner or driver of
"'any such licensed express.'

"'Section 333. The legal rates for regular
"'deliveries, unless otherwise mutually
"'agreed, shall be as follows in the city:

"'Between points within any borough—

"'Not more than five miles apart,
"'each piece $0 40
"'Not more than ten miles apart,
"'each piece 55
"'Not more than fifteen miles
"'apart, each piece 75

"'Between points in different boroughs—
"'half the above rates in addition.

"'Special deliveries at rates to be mutual-
"'ly agreed upon.'

"'Section 373. All license fees received by
"'the Bureau of Licenses shall be regularly
"'paid over to the City Treasury, except the
"'licence fees received from hackmen, dealers
"'in junk and second-hand articles, and for
"'stands within stoop lines, which shall be
"'paid into the Sinking Funds for the Re-
"'demption of the City Debt.'

"'Section 374. The Mayor shall have pow-
"'er to appoint inspectors in the Bureau of
"'Licenses to see that the provisions of this
"'ordinance are fully and properly complied
"'with; and all licensed vehicles and places
"'of business shall be regularly inspected, and
"'the result of such inspection shall be en-
"'dorsed on the official license therefor, to-
"'gether with the date of inspection and the
"'signature of the inspector, and all inspec-
"'tions shall be regularly reported to the Bu-
"'reau of Licenses.'

"'Section 375. Every licensee shall have
"'the official license and exhibit the same upon
"'the demand of any person; and shall report
"'within three days to the Bureau of Licenses
"'any change of residence or place of business;

"'and shall at all times perform the public
"'duties of the business licensed when called
"'upon so to do, if not actually unable.'

"'Section 379. Except as hereinbefore
"'otherwise provided, no person shall violate
"'any of the regulations of this ordinance
"'under a penalty of ten dollars for each
"'offense. No such violation shall be continued
"'under a penalty of ten dollars for each
"'day so continued. Any person engaging in
"'or carrying on any business herein regulated
"'without a license therefor, or any person
"'violating any of the regulations of this ordi-
"'nance, upon conviction thereof by any
"'Magistrate, either upon confession of the
"'party or competent testimony, may be fined
"'not more than ten dollars for each offense,
"'and in default of payment of such fine may
"'be committed to prison by such Magistrate
"'until the same be paid; but such imprison-
"'ment shall not exceed ten days.'"

Following these allegations are (fols. 30-42) averments with regard to Ordinances having been adopted by the Board of Aldermen of The City of New York which regulate the use of the streets of the City by wagons and vehicles, under which Ordinances no license fee is required to be paid; that there are many thousands of wagons and vehicles employed in businesses, other than the express business, which use the streets of the City "but which other wagons and vehicles and the "drivers thereof are not required to be licensed," and that "the number of vehicles belonging to "interstate express companies and engaged in in-"terstate transportation constitutes a small per-"centage of the total number of wagons or vehicles "using the streets in the City."

Additional allegations are then made setting forth and explaining the manner in which the Adams Express Company conducts its business and the methods employed by it. It is further averred as follows:

> "For several years last past, the Adams "Express Company under and by virtue of an "arrangement made by it with the Bureau of "Licenses of The City of New York has taken "out licenses for wagons and drivers to the "amount of about forty per annum and paid "licenses fees thereon, and such number was "agreed upon with said Bureau of Licenses as "representing the domestic business actually "done within said City and not its interstate "business, and the company has at all times "conformed to the ordinances of The City of "New York in respect of its domestic business, "notwithstanding the fact that such domestic "business was conducted by it as an inseparable part and auxiliary of its interstate business" fols. 43, 44).

Said Amended Bill of Complaint further avers as follows:

> "IX.—On or about the 27th day of October, "1910, a large number of drivers, wagon helpers and other employees of the said Adams "Express Company engaged in receiving, delivering and handling packages in The City "of New York, left its service without notice "and without having made any demand upon "the company of any kind whatever, and continued to absent themselves from its service, "having been induced thereto, as your orator "is informed and verily believes, by the interference of other persons not employed by or "in the service of the company, by threats and

"violent means of intimidation and by their "inability to secure due police protection. For "the transaction of its interstate business it, "thereupon, became necessary for the com- "pany to employ and seek to employ new dri- "vers for its wagons. In like manner, drivers "and other employees of other express com- "panies of The City of New York engaged in "interstate commerce left the service of such "companies and continued to absent them- "selves from such service, and it became neces- "sary for such other companies to employ and "seek to employ new drivers for their wagons. "The new drivers and other employees of the "Adams Express Company at work upon its "wagons engaged solely in interstate traffic in "The City of New York have been violently "assaulted by riotous mobs, and the said "wagons in some cases have been greatly dam- "aged, so that for several weeks the interstate "business of the said company was seriously "interrupted and could not be carried on with- "out the protection of the police of the City "of New York.

"X.—Your orator further alleges on informa- "tion and belief that the defendants, William "J. Gaynor, as Mayor, and James C. Cropsey, "as Police Commissioner of The City of New "York, have caused the arrest in the Borough "of Manhattan, in The City of New York, of "an unlicensed driver of the Adams Express "Company engaged in driving a wagon of the "said company used only in interstate trans- "portation, namely, in carrying merchandise "in transit from Jersey City, New Jersey, by "way of steamboat to Brooklyn and thence by "wagon to the consignee in the Borough of "Manhattan in the said city, on through bills

"of lading; that at the time of said arrest, the "said wagon was conspicuously marked with "placards containing the following words, to "wit: 'This wagon carries interstate com-"'merce traffic only'; that the said defend-"ants, the Mayor and Police Commissioner "aforesaid, have threatened to arrest other "unlicensed drivers of the said Adams Express "Company driving its wagons engaged in in-"terstate traffic and to enforce said ordinances "above set forth against the company and all "its drivers; that they have caused the seizure "and impounding of wagons of the said com-"pany engaged in interstate traffic on the "ground that the same were not licensed ac-"cording to the ordinances above quoted, and "have seized and impounded their contents, "being interstate shipments, and that they "have threatened to seize and impound other "wagons, claiming that such unlicensed em-"ployees in driving the said wagons violate the "said ordinances, and that the said unlicensed "wagons are used in violation of the said ordi-"nances, notwithstanding that such employees "and the wagons driven by them are engaged "in interstate transportation.

"Your orator further alleges that such ar-"rests of drivers of the said Adams Express "Company, as made and threatened, and the "seizure and impounding of its wagons en-"gaged in interstate traffic will wholly prevent "it from carrying on its interstate business "and from performing its duty as a common "carrier as required by the said Acts of Con-"gress, and that such acts are and such threat-"ened acts would be an unlawful interference "with the business and property of the com-"pany as a common carrier engaged in inter-

"state commerce, and will and would inflict "irreparable injury upon it to an extent which "it will be impossible to accurately estimate or "ascertain.

"Your orator further alleges that the value "of its said business in The City of New York "is more than the sum of ten thousand dollars "per day; that the injury to which the said "Adams Express Company will be subjected "by such threatened arrests and the consequent "interference with its business will be more "than ten thousand dollars per day in loss of "charges on interstate shipments, and that all "of the above alleged acts and doings of the "defendants are contrary to equity and good "conscience and tend to the manifest wrong, "injury and oppression of the Company and "of your orator in the premises, and the Com-"pany and your orator are without any suffi-"cient or adequate remedy at law in the "matters aforesaid" (fols. 48-54).

And the said Amended Bill of Complaint prayed for an injunction against the defendants, their agents, servants, officers and subordinates restraining and enjoining them

"from enforcing the said ordinances against "the said Adams Express Company, its "wagons, drivers and employees, and demand-"ing licenses therefor, and from arresting its "drivers or causing them to be arrested, and "from denying police protection to the drivers "and wagons of the Company for not comply-"ing with the said ordinances, and from other-"wise interfering with the said Adams Express "Company, its wagons, drivers and employees "engaged in interstate transportation" (fols. 56, 57).

The Answer to the Amended Bill of Complaint raised the issues herein by general denials (fols. 63-69) and it furthermore alleged:

> "That complainant has never been required "to conform to any tariff of charges or rates "prescribed by any municipal ordinance of The "City of New York as to any of complainant's "interstate business; and except that defend- "ants, upon information and belief, deny that "any contract or arrangement of any kind "was made between said Adams Express Com- "pany and the Bureau of Licenses of The City "of New York by which a specified number of "licenses was agreed upon as representing the "domestic business done within said City of "New York, as alleged in said amended bill "of complaint or otherwise" (fols. 69-70).

And the said Answer also averred as follows:

> "*Eighth*—Defendants admit that one or "more unlicensed drivers of unlicensed wagons "of the said Adams Express Company have "been heretofore arrested in The City of New "York for violation of said ordinances herein- "before referred to, and that defendants in- "tend to enforce the said ordinances against "said Adams Express Company and its driv- "ers as well as all other express men doing "business within the City in a due, orderly and "lawful way, and that defendants claim and "allege that said ordinances apply to the driv- "ers and wagons of said Adams Express Com- "pany notwithstanding the fact that such driv- "ers and wagons may be engaged in transport- "ing interstate shipments; but defendants "deny that they have seized and impounded or "threatened to seize and impound wagons of "said Adams Express Company and the con- "tents thereof, except that upon the arrest of

"the drivers hereinbefore referred to the "wagons driven by said drivers were removed "from the City streets to a place of safety and "there kept until same were delivered to and "removed by duly authorized persons acting "for said Adams Express Company, to whom "the same were delivered upon demand. De- "fendants admit that they intend to prevent "by all lawful means the use of unlicensed ex- "press wagons within the City and if neces- "sary to that end they intend to and will re- "move said unlicensed wagons from the streets "of the City to a place of safety where the "same with their contents will be safely kept "to be returned upon demand to said Adams "Express Company or its duly authorized rep- "resentative. Defendants further deny that "the threatened enforcement of said ordi- "nances will prevent said Adams Express "Company from carrying on its interstate "business or from performing its duty as a "common carrier, or that such acts and threat- "ened acts are or would be an unlawful inter- "ference with interstate commerce, or with the "business and property of said Adams Express "Company, or that the enforcement of such "ordinances will or would inflict irreparable "injury or any injury upon said Adams Ex- "press Company. Save as hereinabove ex- "pressly admitted or denied, defendants have "no knowledge of the truth of any other mat- "ter or thing alleged in said paragraph X of "said amended bill of complaint herein, and "pray that complainant may be required to "make full proof thereof, if the same is deemed "material."

The Facts.

It is not denied that the Adams Express Company is engaged in interstate commerce as the major part of its regular business. It transports goods from the City and the State of New York to points in many other states, and from points in such other states to the City and State of New York. It is also engaged in intrastate, or domestic, commerce, transporting goods from point to point within The City of New York, and from The City of New York to points within the State of New York and *vice versa*. This latter part of its business comprises an appreciable part of its entire transactions, its "local" and "intrastate" business amounting, according to the testimony of the plaintiff (fol. 121), to two per cent. of the total business done in the City. In the year 1910, the said total business comprised 18,250,000 pieces (fol. 110), and aggregated $8,906,038.58 (fol. 504).

The Ordinances in question (fols. 19-29) provide regulations for the control and government of the wagons and drivers of all expressmen, *without exception,* doing business within The City of New York.

There is, and can be, no objection to the application of such Ordinances to the "*local*" and "*intrastate*" business of the Express Company. The sole reasonable contention is that they are inapplicable and unenforceable in respect to such of its wagons and drivers as are engaged in "*interstate*" commerce. The Express Company paid to the City license fees for forty of the wagons used in its business at New York City (fol. 260, and Exhibits 10 and 11, fols. 478, 483), out of a total of 448 horse-drawn wagons and 92 automobile trucks (fol. 119).

In the month of October, 1910, a strike broke out among the employees of the United States Express

Company at Hoboken, N. J. (fols. 159, 161), which soon extended to the Adams Express Company's employees (fol. 162). This, of course, caused a great congestion of the business which was in hand.

As appears by the stipulations in the record (fols. 201, 205), the undisputed facts are as follows:

> "It is stipulated by and between the parties "that the Cosby's Code of Ordinances of The "City of New York shall be deemed to be in "evidence, and that any provisions thereof may "be referred to and used by either party, and "that the Ordinances contained in such publi- "cation were at the time of the commence- "ment of this suit, and still are, in full force "and effect.
>
> "It is stipulated by and between the parties "to this suit that although the Adams Express "Company has been employing drivers and "helpers and using wagons in the streets of "The City of New York in the course of the con- "duct by it of its interstate business for over "50 years, it has never been compelled by any "City officials acting under any statute, ordi- "nance or otherwise to take out a license or "licenses for the conduct of its interstate ex- "press business, or to employ only licensed "drivers for its wagons and vehicles used in "such interstate commerce or to conform to "any tariff of charges or rates prescribed by "any statute or municipal ordinance, and that "its wagons and drivers and helpers employed "by it and engaged in interstate business have "never been licensed in The City of New York, "except that for several years last past about "40 licenses for wagons and drivers have been "taken out by the Adams Express Company "and license fees thereon have been paid.

"It is further stipulated and agreed between "the parties that the defendants herein have "caused the arrest in the Borough of Manhat- "tan and The City of New York of a driver of "the Adams Express Company engaged in "driving a wagon of the said company used "only in interstate transportation (such "driver and wagon being unlicensed), namely "*such driver and wagon being engaged in car-* "*rying merchandise in transit from Jersey* "*City, New Jersey, to a point within The City* "*of New York on through bills of lading;* that "at the time of said arrest said wagon had con- "spicuously marked thereon the following "words, to wit: '*This wagon carries inter-* "'*state commerce traffic only,*' and that the "defendants, the Mayor and Police Commis- "sioner of The City of New York, have threat- "ened and intend to arrest other unlicensed "drivers of unlicensed wagons belonging to "said Adams Express Company, although en- "gaged in interstate commerce and to enforce "the ordinances set forth in the bill of com- "plaint herein against the company and all "its wagons and drivers."

Again, at folios 257 to 259:

"It is admitted between the parties, for the "purposes of this case, that there are several "thousand horse-drawn wagons and motor "vehicles which use the streets of The City of "New York, but which wagons and vehicles "and the drivers thereof are not licensed; that "The City of New York has never taken any "steps by ordinance or otherwise to compel "the licensing of such wagons and vehicles or "the drivers thereof; that such wagons and "vehicles are employed in other businesses "than that of expressmen or common carriers

"and are used in transacting for profit the "business of their owners; that included in "these wagons and vehicles are those employed "by department stores, brewers, warehouse-"men, iron makers, grocers, coal dealers, "builders, contractors and manufacturers; "that the total number of wagons and vehicles "of this class which are not licensed greatly "exceeds the number of wagons and vehicles "used in The City of New York belonging to "interstate express companies and engaged in "interstate transportation, and that the num-"ber of vehicles required to be licensed under "the existing ordinances of The City of New "York is small relatively to the total traffic in "the streets."

And again, at folios 428 to 437:

"It is stipulated and agreed between the "parties, for the purposes of this suit, but sub-"ject to correction before final hearing, that "the by-laws and ordinances of The Mayor, "Aldermen and Commonalty of The City of "New York were revised in 1838 and 1839, and "published by authority of the Common Coun-"cil in 1839.

"That the ordinances were again revised in "1856 and published by order of the Common "Council in the edition known as 'Kent's Edi-"'tion' and that such edition of 1856 contains "the first provision in the ordinances providing "for the licensing or regulation of express "wagons or express drivers."

"That the ordinances were revised in 1881 "and as so revised published by authority in "the edition edited by Shepard and Shafer.

"That the ordinances were revised in 1897 "and published by authority in the edition "edited by Percy and Collins.

"That the license ordinances were revised "in 1899, and as so revised appear in the "printed work entitled, Ordinances, Resolu- "tions, etc., passed by the Municipal Assembly "of The City of New York and approved by "the Mayor, published in two volumes and "printed by the Martin B. Brown Co., dated "1899, which publication shall be deemed in "evidence without being filed herein as an ex- "hibit and either party may refer thereto.

"And that there has been an annual revision "of the Ordinances of The City of New York, "from 1901 to 1910.

"It Is Further Stipulated and Agreed, for "the purposes of this suit, that any of the par- "ties hereto may refer on any hearing or appeal "in this suit to any of the ordinances pub- "lished in these several revisions as fully and "to all intents and purposes as if the ordi- "nances had been set out at length in the case, "subject, however, to objection upon the "ground of relevancy or materiality by either "party.

"It is also agreed that either party may "refer to the Revised Ordinances of 1894 as "edited by Laird.

"It Is Further Stipulated and Agreed by "and between the parties, for the purposes of "this suit, that the ordinances of the City of "Brooklyn were revised in 1857 and then pub- "lished by authority of the Common Council "of that city in an edition edited by Henry C. "Murphy; that the ordinances of the City of

" Brooklyn were again from time to time from
" 1857 to 1873 revised and published by author-
" ity of the Common Council in the edition
" edited by W. G. Bishop, and that the ordi-
" nances of said City of Brooklyn were again
" revised in 1888 and 1889 and published by
" authority of the Common Council in the edi-
" tion edited by Shanley and McTierney.

" The same stipulation as that in respect of
" the revisions of the ordinances of The City
" of New York was thereupon entered into be-
" tween the parties.

" It Is Further Stipulated and Agreed by
" and between the parties hereto, for the pur-
" poses of this cause only, that the wagon of
" the Adams Express Company seized on No-
" vember 9, 1910, at Canal street and West
" Broadway for a violation of the ordinances
" of The City of New York, in that it was be-
" ing used and operated as an express wagon
" without a license, which wagon was placed
" in the Corporation Yards at the foot of Riv-
" ington street, East River, has been delivered
" to the Adams Express Company upon its de-
" mand since the institution of this suit.

" That neither the Mayor nor the Police
" Commissioner of The City of New York di-
" rected or ordered that any express wagons
" should be held until called for by a driver of
" the Adams Express Company duly licensed
" to act as such, or until such wagon was duly
" licensed.

" That the Police Commissioner of The City
" of New York, *upon the seizure of the express*
" *wagons which were being used and operated*
" *as express wagons without licenses,* directed
" that said wagons should be delivered up to

"the Adams Express Company, or its duly au-
"thorized agent, upon demand and upon pay-
"ment of the proper charges, but said Adams
"Express Company was not notified of such di-
"rection until after the commencement of this
"suit.

"That defendant, William J. Gaynor,
"Mayor of The City of New York, and defend-
"ant James C. Cropsey, Police Commissioner
"of The City of New York, shall each be
"deemed to have been called as a witness on
"the part of the defendants herein and to have
"each testified that defendants do not claim
"the right to seize unlicensed wagons and hold
"the same until a license has been obtained
"therefor and until removed by a licensed
"driver of the express company, and that they
"have never claimed such right and have no
"intention of claiming or attempting to en-
"force any such alleged right, but that on the
"contrary defendants intend to and will de-
"liver to the owner thereof, on demand, any
"and all express wagons removed from the
"streets of the city upon the arrest of their
"drivers for violation of said ordinances in re-
"spect to licenses, *and that it is merely the*
"use of express wagons in the express business
"within the City in violation of said ordi-
"nances that defendants intend to prevent."

POINTS.

I.

The Ordinances in question were enacted under the authority of the provisions of the Greater New York Charter, and as so enacted have the force of law within the corporate limits of The City of New York.

The Greater New York Charter (Laws of 1901, chap. 466) provides as follows:

"Sec. 43. The board of aldermen shall have "power to make * * * all ordinances "* * * not contrary to the laws of the "State, or the United States, as they may deem "necessary to carry into effect the powers con- "ferred upon The City of New York by this "act, * * * and such as they may deem "necessary and proper for the good govern- "ment, order and protection of persons and "property, and for the preservation of the pub- "lic health, peace and prosperity of said city "and its inhabitants * * *."

"Sec. 44. No enumeration of powers in this "act shall be held to limit the legislative "power of the board of aldermen except as in "this act specifically provided and the board "of aldermen in addition to all enumerated "powers may exercise all of the powers vested "in The City of New York by this act, or other- "wise, by proper ordinances, rules, regulations "and by-laws not inconsistent with the provi- "sions of this act, or with the Constitution or "laws of the United States or of this State;

"and, subject to such limitations, may from "time to time ordain and pass all such ordi- "nances, rules, regulations and by-laws, ap- "plicable throughout the whole of said city "or applicable only to specified portions there- "of, as to the said board of aldermen may seem "meet for the good rule and government of the "city, and to carry out the purposes and pro- "visions of this act or of other laws relating "to the said city, and may provide for the en- "forcement of the same by such fines, penal- "ties, forfeitures and imprisonment as may by "ordinance or by law be prescribed."

"Sec. 50. Subject to the Constitution and "laws of the State, the board of aldermen shall "have power to regulate the use of streets and "sidewalks for foot passengers, animals or "vehicles; to regulate the speed at which "vehicles shall be driven or ridden and at "which vehicles shall be propelled in the "streets * * *."

"Sec. 51. Subject to the constitution and "laws of the state, the board of aldermen shall "have power to provide for the licensing and "otherwise regulating the business of dirt "carts, public cartmen, truckmen, hackmen, "cabmen. *expressmen*, car-drivers and boat- "men; of bootblacks; of pawnbrokers, junk- "dealers, keepers of intelligence offices, deal- "ers in second-hand articles, hawkers, ped- "dlers, vendors and scalpers in coal freights; "of menageries, circuses and common shows; "of bone boiling, fat rendering and other "noxious businesses; and shall have power to "regulate or forbid the keeping of dogs. The "board of aldermen shall also have power to "regulate the rates of fare to be taken by "owners or drivers of hackney coaches, car-

"riages, motors, automobiles or other vehi-
"cles, and to compel the owners thereof to pay
"annual license fees. All ordinances in re-
"lation to any of the matters mentioned in
"this section shall be general, shall provide
"for the enforcement thereof in the manner
"specified in section forty-four of this act as
"amended, and shall fix the license fees to be
"paid, if any. All licenses shall be according
"to an established form, and shall be regu-
"larly numbered and duly registered as shall
"be prescribed by the board of aldermen."

The Ordinances in question were passed in pursuance of such legislative authority, and

"municipal ordinances passed in pursuance of
"authority from the legislature have the force
"of law and are as obligatory as if enacted
"by the legislature itself."

City of Buffalo *vs.* New York, L. E. & W. R. R. Co., 152 N. Y., 276, 280;
Kittinger *vs.* Buffalo Traction Co., 160 N. Y., 377, 389.

II.

The Ordinances are a valid exercise of the police power of the municipality, which has been delegated to it by the State, and are reasonable and just.

From the earliest times in the history of our municipal government it has been customary to require that certain lines of quasi-public business,

which, seeking the public patronage, are planned and carried on for personal gain and profit, and which need more or less of governmental supervision and regulation, to pay a license fee for a temporary permit or "license" to do that which would not otherwise be permitted. No one will deny that the business of public cartmen, truckmen and expressmen are included within that class; nor will any one dispute that when the businesses, so licensed, are carried on wholly within the State, as a vast majority of them are, the Ordinances apply to them with all the force of law. It is only when the business is partly interstate and part intrastate that any question of the constitutionality of the Ordinances arises.

Nor will anyone negative the proposition that when the Board of Aldermen "deems" it "necessary and proper for the good government, order and protection of persons and property," it has the legislative authority to require an annual license fee for each express wagon, and that "every person "driving a licensed hack, or express, shall be li- "censed as such driver."

It is the contention of the appellant that, when one of its drivers is engaged in driving an express wagon through the City streets which is employed in interstate commerce, no license is required, under said Ordinances, either for the wagon or its driver. In discussing such a question there are certain fundamental principles which control, and certain rules of construction adopted by this Court which apply. Thus it has been generally held that the power of Congress to regulate interstate commerce is exclusive and that the State cannot legislate on that subject.

Covington, etc., Bridge Co. *vs.* Kentucky, 154 U. S., 204.

Western Union Tel. Co. *vs.* James, 162 U. S., 650.

It has also declared that the power of Congress is exclusive, and the State cannot interfere at all, whenever the subject of regulation is national in its character, or admits only of one uniform system or plan of regulation. But whenever the subject of regulation is of a local nature, and only incidentally affects interstate commerce, it is within the legislative power of the State, in the absence of conflicting national regulation of the same subject.

Robbins *vs.* Shelby County Taxing Dist., 120 U. S., 489, 492.
Western Union Tel. Co. *vs.* James, *supra.*
New York, N. H. & H. R. R. Co. *vs.* New York, 165 U. S., 628.
Lake Shore & M. S. R. Co. *vs.* Ohio, 173 U. S., 285.
At. & Pac. Tel. Co. *vs.* Philadelphia, 190 U. S., 160.
Missouri Pac. R. Co. *vs.* Larabee Flour Mill Co., 211 U. S., 612.

"The exact limit of lawful legislation upon "this subject cannot, in the nature of things, "be defined. It can only be illustrated from "decided cases by applying the principles "therein enunciated, determining from these "whether in the particular case the rule be "reasonable or otherwise."

Houston & Texas R. Co. *vs.* Mayes, 201 U. S., 321.

In line with this ruling it has been decided that any exercise of state authority in whatever form manifested, which directly regulates interstate commerce, is repugnant to the commerce clause of the Constitution.

Athletic Coast Line *vs.* Wharton, 207 U. S., 328, 334.

But this Court has also ruled that, in the absence of legislation by Congress, the state may enact reasonable laws, under its police powers and "in pursuance of acknowledged state authority," which *indirectly affect* interstate commerce.

Reid *vs.* Colorado, 187 U. S., 137;
Asbell *vs.* Kansas, 209 U. S., 251.

For example, a statute prohibiting the use of stoves in passenger cars is a valid police regulation, though such cars are employed in interstate commerce.

New York, N. H. & H. R. Co. *vs.* New York, 165 U. S., 628.

Mr. Justice Harlan said, at page 631:

> "The mere grant to Congress of the power "to regulate commerce with foreign nations "and among the states did not of itself and "without legislation by Congress, impair the "authority of the states to establish such "reasonable regulations as were appropriate "for the protection of the health, the lives and "the safety of the people. * * * The statute "in question is not directed against interstate "commerce, nor is it within the meaning of "the constitution a regulation of commerce, "although it controls in some degree the conduct of those engaged in such commerce. So "far as it may affect interstate commerce, it "is to be regarded as legislation in aid of commerce, and enacted under the power remaining with the state to regulate the relative "rights and duties of all persons and corporations within its limits."

Again, an Alabama statute which required locomotive engineers to be examined and licensed was held to be a valid police regulation, and not uncon-

stitutional as a regulation of interstate commerce, even when applied to an interstate train.

Smith *vs.* Alabama, 124 U. S., 465.

Another Alabama statute requiring certain railway employees to be examined for color blindness and to be licensed, was upheld as a valid police regulation and held applicable to interstate trains in

Nashville, Chat. & St. L. R. Co. *vs.* Alabama, 128 U. S., 96.

An Ohio statute requiring a reasonable number of trains to stop at designated stations was held to be a valid police regulation even as applied to interstate trains; and it was further held that the police power of the state extends not only to provisions tending to promote the health, the morals and the safety of the public, but also to whatever promotes the public peace and convenience.

Lake Shore & M. S. R. Co. *vs.* Ohio, 173 U. S., 285.

See, also,

Hemmington *vs.* Georgia, 163 U. S., 299.

Patapsco Guano Co. *vs.* Bd. of Agriculture, 171 U. S., 345.

Olsen *vs.* Smith, 195 U. S., 332.

Ter. of New Mexico *vs.* McLean, 203 U. S., 38.

New York *vs.* Hesterberg, 211 U. S., 31.

In the light of the principles enunciated in these decisions, the Ordinances which are the subject matter of this controversy are certainly valid. They reasonably regulate matters which fall within the class of subjects which are under state control. They "promote the public peace and convenience" and they are "enacted under the power remaining with "the State to regulate the relative rights and duties

"of all persons and corporations within its limits." The "safety of the people" of The City of New York, and of their goods, is promoted by the requirement of a license for every express wagon and its driver. It is a regulation which tends directly to that end by the supervisory control it assumes over the acts and operations of all express drivers and of all express wagons. It prevents a horde of sharpers and thieves, in the guise of public expressmen, from preying upon the good citizens of the metropolis. Likewise the Ordinances tends to check any disposition on the part of a recognized licensed class to combine and extort unjust charges from the people.

It is pertinent to say, therefore, that far from directly regulating interstate commerce in those cases, where wagons and drivers of the Adams Express Company are employed in its interstate business, these Ordinances may be regarded as legislation in aid of such commerce; and this for the reason that, in the absence of legislation by Congress on these subjects, the Ordinances are of great assistance to such commerce by making its operation and conduct sure and certain both for the Express Company and the shippers. They aid the Express Company by giving its business the habiliments of official approbation; they protect the shipper by doubly insuring his shipments within the jurisdiction of the City government.

It does not seem probable that this Court, in view of its well known rulings, will now hold that these Ordinances, locally enforceable in a matter of acknowledged local authority, infringe upon the powers reserved to Congress in the commerce clause. There is in them not a direct regulation of, but only an indirect beneficial assistance to interstate commerce, a right long since recognized as remaining with the State in the absence of direct legislation on the subject by Congress. This propo-

sition was thus clearly and forcefully stated by Mr. Justice Hughes in

The Minnesota Rate Cases, 230 U. S., 352, 402:

"But within these limitations there neces-
"sarily remains to the States, until Congress
"acts, a wide range for the permissible exer-
"cise of power appropriate to their territorial
"jurisdiction although interstate commerce
"may be affected. It extends to those matters
"of a local nature as to which it is impossible
"to derive from the constitutional grant an
"intention that they should go uncontrolled
"pending Federal intervention. Thus, there
"are certain subjects having the most obvious
"and direct relation to interstate commerce,
"which nevertheless, with the acquiescence of
"Congress, have been controlled by State legis-
"lation from the foundation of the government
"because of the necessity that they should not
"remain unregulated and that their regulation
"should be adapted by varying local exi-
"gencies; hence, the absence of regulation by
"Congress in such matters has not imported
"that there should be no restriction, but rather
"that the States should continue to supply the
"needed rules until Congress should decide to
"supersede them. Further, it is competent for
"a state to govern its internal commerce, to
"provide local improvements, to create and
"regulate local facilities, to adopt protective
"measures of a reasonable character in the
"interest of the health, safety, morals and wel-
"fare of its people, although interstate com-
"merce may incidentally or indirectly be in-
"volved. Our system of government is a
"practical adjustment by which the national

"authority as conferred by the constitution is "maintained in its full scope without unneces- "sary loss of local efficiency. Where the sub- "ject is peculiarly one of local concern, and "from its nature belongs to the class with "which the State appropriately deals in "making reasonable provision for local needs, "it cannot be regarded as left to the unre- "strained will of individuals because Congress "has not acted, although it may have such a "relation to interstate commerce as to be "within the reach of the Federal power. In "such case, Congress must be the judge of the "necessity of Federal action. Its paramount "authority always enables it to intervene at "its discretion for the complete and effective "government of that which has been committed "to its care, and, for this purpose and to this "extent, in response to a conviction of national "need, to displace local laws by substituting "laws of its own. The successful working of "our constitutional system has thus been made "possible."

Again, at page 410:

"And the legislation of the States, safe- "guarding life and property and promoting "comfort and convenience within its jurisdic- "tion, may extend incidentally to the opera- "tions of the carrier in the conduct of inter- "state business, provided it does not subject "that business to unreasonable demands and "is not opposed to Federal legislation."

The appellant may contend that Congress has acted on the subject in the Interstate Commerce Act which includes express companies. That Act, however, contains no provisions or regulations upon the particular matters embraced within the

Ordinances. If the very general provisions of the Interstate Commerce Act were the only regulations now existing and enforceable against express companies in the conduct and operation of their interstate business, then indeed those companies would be left with a dangerously free hand within the States themselves and in municipal jurisdictions. But such a contention will not stand judicial scrutiny. The whole subject of the operation of such express companies has not been taken under direct national supervision, and Congress has not by any statute covered *the whole subject*. As Mr. Justice Harlan observes:

> "It should never be held that Congress intends to supersede, or by its legislation suspend the exercise of the police powers of the states, even when it may do so, unless its purpose to effect that result is clearly manifested. This Court has said—and the principle has been often reaffirmed—that in the application of this principle of supremacy of an Act of Congress in a case where a state law is but the exercise of a reserved power, the repugnance or conflict should be direct and positive, so that the two Acts could not be reconciled or consistently stand together."
>
> Reid *vs.* Colorado, 187 U. S., 137.

It cannot be claimed that there are any Federal statutes in any way touching the subject matter of these Ordinances, other than the Interstate Commerce Act, and, as that Act does not cover the same ground, and is not in any way inconsistent with the enforcement of the Ordinances, the latter retain their full vigor and validity as reasonable and very proper local police regulations, when applied to wagons employed in interstate commerce and their drivers.

III.

The ordinances are not a tax laid upon interstate commerce.

The provisions of the Ordinances specially applicable to express companies are set out in the Amended Bill (fols. 19, 29). In full they are embraced within

> Sections 300, 379, Chapter 7, Code of Ordinances of The City of New York (Cosby's).

They may be summarized as follows:

Each express wagon used in the express business within the City must be licensed, and the fee for such license is $5 (Secs. 305, 306 and 308).

Each driver of such wagon must be licensed, and pay a fee for such license of 50 cents, such license being obtained only upon the certificate of two reputable residents of the City testifying to the applicant's competency (Secs. 308 and 315).

Every public express wagon shall be marked with the word "Express," or the letters "Exp.," together with the figures of the official number (Sec. 331).

Every owner of a public express shall give a bond of $100, "conditioned for the safe and prompt delivery of all baggage, packages, parcels," etc. (sec. 332).

The licensee is required to exhibit his official license "upon the demand of any person" (sec. 375).

All words, etc., required "shall be shown permanently and conspicuously" (sec. 376).

All licensed vehicles and places of business "shall be regularly inspected" (sec. 374).

Provision is made for hearing complaints against licensees, and fines may be imposed for violation of the regulations (secs. 307, 378 and 379).

The license fees of $5 for each express wagon and of 50 cents for each driver thereof, therefore, are merely the necessary sums reasonably fixed to cover the ordinary and usual expenses of administration, supervision and inspection; and, as such, are sums collected in aid of the exercise of the *police powers* and are not an exercise of the *taxing power*. The distinction between licenses, and fees in connection therewith, exacted in the exercise of the police power, and license taxes, levied under the taxing power, has long been recognized.

West. Union Tel. Co. *vs.* New Hope, 187 U. S., 419;
Atl. & Pac. Tel. Co. *vs.* Philadelphia 190 U. S., 160;
Postal Tel. & Cable Co. *vs.* New Hope, 192 U. S., 55;
Postal Tel. & Cable Co. *vs.* Borough of Taylor, 192 U. S., 64;
Duluth Brew. & Malt. Co. *vs.* City of Superior, 123 Fed., 353, 358, 359;
Barrett *vs.* City of New York, 183 Fed., 796.

In the case at bar there is neither allegation nor proof, or offer of proof, that the license fees are excessive or unreasonable.

The contention of possible inconvenience or burden upon the express company in case each state or city should enact its own regulations, is fully met by the ruling of this Court in

New York, N. H. & H. R. Co. *vs.* New York, 165 U. S., 628,

wherein it was held that the remedy for such inconvenience lies in Congress alone, which could by its own regulations supersede those of the various states. So long as Congress remains inactive, the local regulations prevail, and inconveniences occasioned thereby cannot be deemed an unlawful burden upon interstate commerce.

IV.

The Ordinances are general, and not special, and make no unjust discriminations in violation of the Fourteenth Amendment.

The Ordinances cover and apply to all express wagons and all their drivers without exception. The whole of that class is covered, and no distinctions are made as to any in such class. Chief Judge Lacombe stated this proposition in a nutshell when he said:

> "It is sufficient to say that an ordinance "covering all instances of a certain class may "be a 'general' one, although it may not be "universally applicable to all classes."
>
> Barrett *vs.* City of New York, 183 Fed., at page 801.

It is also clear that the Ordinances do not make any unusual discriminations, nor deprive the Express Company of the equal protection of the laws in violation of the Fourteenth Amendment. A legislative body may classify occupations for the purpose of police regulation, and such classification, if not unreasonable or arbitrary, does not operate as a denial of the equal protection of the laws. "The State may distinguish, select and

classify objects of legislation and necessarily the power must have a wide range of discretion."

Magoun *vs.* Illinois Trust & Savings Bank, 170 U. S., 283.

Orient Ins. Co. *vs.* Daggs, 172 U. S., 557.

Railway Co. *vs.* Mackay, 127 U. S., 204, 208.

Railway Co. *vs.* Beckwith, 129 U. S., 26.

This Court said in the

Orient Insurance Co. case, *supra*,

that a legislative classification suffices "if it is "practical, and is not reviewable unless palpably "arbitrary." The classification made by the Ordinances in question is a natural and scientific one. It is indicative of a business which everybody knows exists, and has existed, as a well marked and defined separate occupation, distinct from all other kinds of public carriers. It is, indeed, a very reasonable distinction for the purposes intended; and when all engaged in that particular occupation are included within the purview of the law or ordinance, the case does not fall within the constitutional inhibition.

V.

So much of the decree as is appealed from by the appellant, Barrett, should be affirmed, with costs.

Dated October 16, 1913.

Respectfully submitted,

ARCHIBALD R. WATSON,
Corporation Counsel,
Attorney for Respondents.

ARCHIBALD R. WATSON,
TERENCE FARLEY,
WILLIAM E. C. MAYER,
of Counsel.

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Supreme Court of the United States,

OCTOBER TERM, 1913.

EDWARD T. PLATT, as Treasurer of the United States Express Company, etc., Appellant, AGAINST THE CITY OF NEW YORK, *et al.*, Appellees.	No. 85.
THE CITY OF NEW YORK, *et al.*, Appellants, AGAINST EDWARD T. PLATT, as Treasurer of the United States Express Company, etc., Appellee.	No. 86.

CROSS APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF ON BEHALF OF UNITED STATES EXPRESS COMPANY.

Statement.

This case was heard and determined in the court below with the case (hereinafter referred to as the Barrett case) of Barrett as President of the Adams Express Company against

the City of New York, *et al.* The Barrett case is on this court's docket as Nos. 83 and 84.

The stipulation herein (trans., p. 29) shows the character and extent of the business of the United States Express Company (over more than 32,000 miles of railroad), and shows that that business in New York City consists, with the exception of three-tenths of one per cent., of interstate and foreign commerce, and further shows that in all other respects the facts herein are substantially the same as in the Barrett case and provides that the case shall be heard and determined upon such stipulation and upon the evidence and stipulations in the Barrett case.

For more than fifty years an ordinance of the City of New York has been in effect providing for licensing and regulating many sorts of business, including the business of expressmen, and imposing license fees which are required to be paid over to the City Treasury (Barrett trans., p. 143). Such ordinance was never applied to the United States Express Company until November, 1910, when, in the midst of a strike of the drivers and other employees of that and other express companies, the City undertook to apply and enforce the ordinance as to such express companies and impounded their interstate wagons because unlicensed, arrested the drivers thereof because unlicensed, and refused special police protection to such wagons driven by unlicensed drivers (trans., pp. 22–24; Barrett trans., p. 145).

Thereupon this suit on behalf of the United States Express Company was brought to enjoin the enforcement of this ordinance because of its unconstitutional interference with interstate commerce.

The court below held that certain general provisions, so far as they purported to require a license as a prerequisite to conducting an interstate express business, were void, but the court upheld the specific provisions complained of, although they required licenses, imposed license fees and regulated the

conduct of expressmen (trans., pp. 45 *et seq.*). Thus the court denied the substantial relief sought by the complainant.

The ordinance in question is Chapter 7 of Part I of the Code of Ordinances. The most important sections are printed in full and an outline of the remainder of the ordinance is shown in the appendix (pp. I–VIII.).

The provisions of the ordinance throughout make it clear that its purpose is the supervision and regulation of certain kinds of business through the usual method of prohibiting the conduct of the business except upon an annual license which is subject to revocation by the Mayor and for which an annual license fee must be paid.

As to express companies, the most important provisions are as follows:

"Expressmen" are prohibited from carrying on business without such license (Sections 305, 306, 379), and the term "expressman" is so defined as to include an interstate express company (Section 330).

The annual license fees (but only one-half need be paid upon renewals) are $5 for each express wagon and 50 cents for each express driver (Section 308) and the license fees are to be paid into the City Treasury (Section 373).

No person may be licensed except a citizen of the United States or one who has declared intention to become a citizen (Section 307), and every application for an express driver's license must be endorsed in writing by two reputable residents of the City of New York testifying to the competence of the applicant, and the employment of unlicensed drivers is prohibited (Section 315).

Express wagons must be lettered and numbered so as to be identified (Sections 331, 376). Inspectors are provided to enforce the ordinance and inspect licensed vehicles and places of business (Section 374) and licenses must be exhibited to any person upon demand (Section 375).

Separate bond to the City with sureties approved by the Mayor or Chief of the Bureau of Licenses must be given for

each express wagon to insure safe delivery of goods (Section 332), rates for regular deliveries are prescribed, (Section 333), but there is no complaint that these rates are enforced as to interstate transportation; and all licensed expressmen are required to perform the public duties of the business (Section 375).

The United States Express Company contended that the purpose of the ordinance was to regulate the business relations between it and its customers; that its business was interstate business and was under the exclusive jurisdiction of Congress and therefore that the situation was controlled by the doctrine of *Crutcher vs. Kentucky*, 141 U. S., 47; and furthermore that Congress had regulated the business in the aspects dealt with by the ordinance and that that regulation was exclusive. The company pointed out that all the substantive provisions of the ordinance sought to accomplish purposes which, as to interstate express traffic, are dealt with by the Interstate Commerce Act, as is evidenced by the following comparison:

The Ordinance.	The Act of Congress.
As to Duty to Perform the Service.	
Every licensee (including expressmen) shall perform the public duties of the business licensed when called upon so to do" (Section 375).	Every carrier "shall provide and furnish such transportation upon reasonable request therefor" (Section 1).
As to Responsibility for the Service Performed.	
Every public express is required to give bond to the City of New York for the safe and prompt delivery of all packages, parcels, etc., entrusted to the owner or driver (Section 332).	Every carrier shall establish reasonable regulations and practices to secure the safe and prompt delivery of property * * * (Section 1). Any carrier shall be liable for damage caused by it or by any other carrier and may recover from the carrier on whose line the damage occurs Section 20).

To Prevent Unjust Charges.

Section 333 prescribes the legal rates for regular deliveries which shall prevail unless otherwise mutually agreed.	Rates shall be just and reasonable (Section 1); unjust discrimination (Section 2), and undue preference (Section 3) are prohibited; rates shall be published and observed (Section 6); the Commission may rescribe maximum rates (Section 15).

Method of Enforcement.

Primarily through the issue of a revocable license allowing the privilege of engaging in the business (Sections 300, 302–309).	The Act to regulate Commerce contains no such drastic method of enforcing the regulations of the Act.
Numerous provisions impose penalties for violations of the regulations prescribed.	Numerous provisions for penalties, and for civil proceedings.

The lower court held that a person engaged in conducting an interstate express could not be required to take out a local license as a prerequisite to conducting such business. Accordingly, the court enjoined the enforcement of Sections 305 and 306, which, merely as an introduction to the license scheme of the ordinance, provided in general terms that expressmen must be licensed.

But the court while holding that the primary purpose of the ordinance was "the licensing and otherwise regulating of certain specified businesses," nevertheless held that all the specific license provisions of the ordinance could be regarded as, incidentally, regulations as to the use of the streets, and that such regulations were separable and could be upheld even as to an interstate carrier. Thereupon the court upheld, as against the interstate express companies, the entire license scheme in all its practical effectiveness.

The court also upheld Section 332, requiring the giving of a bond for each licensed vehicle in the penal sum of $100 with

sufficient surety approved by the Mayor or Chief of the Bureau of Licenses conditioned for the safe and prompt delivery of parcels. The court held that this provision was "not to be condemned because it affects interstate commerce."

SPECIFICATION OF ERRORS.

The court erred in general in refusing to enjoin the license scheme of the ordinance. The specific errors which will be discussed in this brief are as follows:

The error committed by the court in holding that specific sections* of the ordinance were separable from the general provisions which were declared by the court to be in violation of the commerce clause of the Constitution of the United States.

The error committed by the court in holding that the specific sections just referred to were valid and not in violation of the commerce clause of the Constitution of the United States.

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* Sections 307, 308, 315, 330, 331, 332, 373, 374, 375, 376, 378 and 379 of Chapter 7 of Part I of Cosby's Code of Ordinances.

ARGUMENT.

There was no Basis for Separation Because the Various Specific Provisions Upheld Below Cannot be Regarded as Regulations as to the Use of the Streets.*

The provisions as to express wagons have no relation to the use of the streets. The ordinance does not regulate the character of the express wagons as to dimensions, weight, material, size of tire, motive power, condition of repair, or in any respect and it applies the term "express" to "every vehicle of whatever construction" (Section 330).

Nor does the ordinance deal with the manner in which express wagons shall use the streets. The license inspectors have no power except to see that the provisions of the ordinance are complied with and have no functions as to the use of the streets.

The object of the ordinance is to require the expressman to perform his public function, to make safe and prompt delivery of goods, and to observe the legal rates. The license, the lettering of the wagons, the inspection, and the power to revoke the license are all means to those ends, but none of them is a means to the end of regulating the use of the streets.

The provisions as to licensing the drivers of express wagons must stand or fall with the provisions as to licensing the wagons themselves, because no driver is required to have a license except a driver of a "licensed express." If the interstate express wagon need not be licensed, then its driver need not be licensed.

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*Section 333 requiring bonds to insure delivery of goods is not claimed by the lower court to have any relation to the use of the streets and is discussed separately below.

The ordinance was passed under Section 51 of the Charter (see appendix, page I) designed to provide for the regulation of various *businesses* and a contrast of the ordinance and of this section of the Charter with Section 50 of the Charter and with the ordinance passed thereunder, Chapter 12 of Part I of the Code of Ordinances (see appendix, pages VI.–VIII.) designed to provide for the regulation of the use of the streets shows that the provisions of the license ordinance cannot properly be regarded as having a relation to the use of the streets.

The application of such license provisions to an interstate express company tends to interfere with the orderly conduct of interstate transportation and in fact caused very serious interference here. The court should not adopt a strained and unnatural construction and thereby create unnecessarily a basis for interfering with the conduct of interstate transportation.

The Various Specific Provisions Upheld Below, Even if They Could Be Regarded as Regulations as to the Use of the Streets, Are Not Separable From the Remainder of the Ordinance.

The lower court relied upon *Willcox vs. Consolidated Gas Company*, 212 U. S., 19, which declared "if the court can conclude it (the balance of the statute) would have been enacted if that portion which is illegal had been omitted, the remainder of the statute thus treated is good." But the court cannot so conclude in this case.

The lower court has held that the primary purpose cannot be accomplished and yet has upheld certain provisions on the ground that, although their primary purpose fails, they may be regarded as operating incidentally to promote another purpose which is within the power of the city. Such a view is opposed

to the true doctrine. Thus in *Reagan vs. Farmers' Loan & Trust Co.*, 154 U. S., 362, 395, the court in upholding a portion of the statute showed that it effectuated "the prime object of the legislation." In *Haskell vs. Kansas Natural Gas Company*, 224 U. S., 217, 222, the court treated the entire statute as invalid as to foreign corporations, because its main and controlling purpose as to those corporations was unconstitutional, even though other provisions, if separately enacted, might have been valid.

The court should not impute unnecessarily to the city a purpose to adopt an unreasonable and unjust classification. But such imputation results from the action of the lower court, because that action establishes a license to regulate street use for a restricted class of vehicles although similar regulation is not applied to any other vehicles using the streets in the same manner. Where the purpose was to regulate the business a justifiable principle of classification permitted the restriction of the license regulation to vehicles employed by expressmen and cabmen. But if the purpose be to regulate street use, no such restriction is just or rational, and it is strikingly out of harmony with Section 50 of the Charter relating to the regulation of the use of the streets and prohibiting the passage of any special ordinances in relation thereto.

The taxation feature by itself would make this ordinance inseparable. The license fees imposed here, if they can be regarded as designed to cover the cost of inspection, must be regarded as having relation at least in great part to the regulation and supervision of business which the lower court indicates was the primary purpose of the ordinance, and which cannot be upheld as to the interstate carriers. Clearly a license fee would not be sustained, as against interstate carriers, which was designed in whole or in great part to cover the cost of an unconstitutional supervision and regulation of their business. This license tax upon the 343 wagons of the United States Express Company (trans., page 31) amounts

to $1,715 for the first year, plus a substantial additional amount for the necessary drivers. Even upon the theory of the lower court, it is apparent that in great part this imposition represents an unconstitutional burden, and it is impossible to separate it.

In dealing with local regulations affecting instrumentalities of interstate commerce, the court must weigh two important considerations—one, the interest of the people of the United States that their channels of interstate communication and transportation shall be unobstructed, and the other, the interest of the people of a given community that their local police necessities shall be met. It is highly important that the local communities themselves should be encouraged to adopt their local police regulations for the distinct and primary purpose of meeting legitimate local necessities and should be discouraged from reaching out toward more ambitious forms of regulation. But the course adopted by the lower court says in effect to local communities "adopt any ordinances you please to control interstate commerce and if you cannot coerce the interstate carriers into compliance we will reconstruct your ordinances for you so as to accomplish the maximum of what you could have done if you had proceeded within your powers."

But the License Provisions are an Unreasonable Burden upon Interstate Commerce Even if Relating to the Use of the Streets and Capable of Separation.

This proposition is approached with a full appreciation of the doctrine that State or municipal regulations to promote local police purposes may be upheld, although incidentally affecting instrumentalities of interstate commerce.

The Reasonableness of the Regulation is a Question for the Court and the Inquiry is Broader Under the Commerce Clause than Under the Fourteenth Amendment.

But such regulations must have "appropriate relation to the public convenience" and "not go beyond the necessities of the case"; the courts should "guard vigilantly against 'needless intrusion' upon the field committed by the Constitution to Congress"; and "the reasonableness or unreasonableness of a State enactment is always an element in the general inquiry by the court whether such legislation encroaches upon national authority" (*Lake Shore & Michigan Southern Ry. Co. vs. Ohio*, 173 U. S., 285, 300, 301).

The court in determining whether a local regulation unduly encroaches upon the authority of Congress makes a broader and more searching inquiry than when considering whether a local regulation is in violation of the Fourteenth Amendment. Thus the Pennsylvania statute prohibiting the sale of oleomargarine was held not to be such an unreasonable exercise of legislative authority as to violate the Fourteenth Amendment (*Powell vs. Pennsylvania*, 127 U. S., 678), and nevertheless was held to be, as applied to interstate commerce, an unreasonable encroachment upon the authority of Congress, and this dis-

tinction was expressly pointed out (*Schollenberger vs. Pennsylvania*, 171 U. S., 1, 16).

Likewise, a statute requiring all intrastate passenger trains to be stopped at all county seats was held not to be unreasonable under the Fourteenth Amendment (*Gladson vs. Minnesota*, 166 U. S., 427), while a similar statute applied to interstate trains was held unreasonable under the commerce clause (*Cleveland, etc., Railway Co. vs. Illinois*, 177 U. S., 514). In the former case the court did not pass on the question of fact whether other trains afforded adequate facilities for the county seat involved, but in the latter case the court determined that question of fact.

In the light of these principles we contend that the provisions upheld by the lower court should be held to be an unreasonable burden upon interstate commerce even if relating to the use of the streets and capable of separation.

THE RELATION TO ANY LOCAL POLICE NECESSITY IS SO REMOTE AND FANCIFUL, AND THE INTERFERENCE WITH INTERSTATE COMMERCE SO DIRECT AND BURDENSOME, THAT THE REGULATIONS ARE UNREASONABLE AS TO INTERSTATE COMMERCE.

As express wagons these provisions have this operation: Wagons employed in interstate commerce and moving by way of the Hudson River Ferries between points in New York City and points in New Jersey (trans., p. 30) cannot be moved in New York City unless they have City licenses issued upon payment of substantial license fees and revocable at the discretion of the Mayor. The necessity or appropriateness of such a regulation for the promotion of safety in the use of the New York City streets is so remote as to be fanciful and yet the interference with interstate commerce may be substantial. Consequently the degree of undue encroachment upon interstate commerce becomes so great that the provision should be declared inoperative.

It is not believed that the courts would uphold an ordinance prohibiting any freight car moving in interstate commerce to be moved in the City of New York, even in the streets of the City, unless the car had a license issued by the City and revocable at the discretion of the Mayor. And yet that is not many degrees removed from the present situation where such an ordinance is applied to hundreds of wagons of the United States Express Company (most of them stabled in New Jersey) constantly plying between New York City and points in New Jersey (trans., pp. 30, 31).

The provision as to licenses for drivers of these wagons is open to similar criticism. Superficially the provision that the application for a driver's license shall be endorsed in writing by two residents of the City testifying to the applicant's competence may be regarded as having some bearing on safe driving. But the word "competence" is undefined and there is no provision for any inspection or regulation calculated to promote careful driving, so that the requirement can have no substantial relation to the promotion of safety, and is coupled with provisions which are unreasonable as to these interstate carriers.

The drivers of express wagons are not merely drivers, but are representatives of the express companies to deal with shippers and consignees. The drivers quote the rates prescribed under the Interstate Commerce Act and collect the charges which must be collected in accordance with that Act (Barrett trans., pp. 39, 57). Is it not a needless intrusion upon the domain of Congress for the City of New York to prohibit any man to act in this capacity until his undefined "competence" shall have been passed upon by its Bureau of Licenses?

Moreover, the ordinance admits of no proof of the question of "competence" except by residents of New York City. This requirement may be difficult at all times when the drivers and probably their superior officers live in New Jersey

and may become impracticable in times of strike when drivers qualified to discharge the duties may have to be brought from long distances. Thus the ordinance in its provisions as to licensing drivers has a very substantial tendency to delay the handling of interstate express traffic, and in the case of the strike out of which this litigation grew (Barrett trans., pp. 53, 70, 113) actually caused a great deal of such delay—and the avoidance of delay is the principal reason why the public employs the express service.

Again, by virtue of Section 307, no person can act in the City of New York as a driver for the United States Express Company unless he is a citizen of the United States or has declared his intention to become a citizen. Such a provision as to the status of persons who shall discharge these important functions of interstate express companies may or may not be desirable, but is not the subject one for action by Congress, rather than for separate action by every state and municipality?

The theory that the City of New York may, for the promotion of safety in the streets, prohibit the United States Express Company's drivers to act as such in the City without a local license rests upon the assumption that such local regulation is justified by the doctrine of *Smith vs. Alabama*, 124 U. S., 465, and *Nashville, etc., R. R. Co. vs. Alabama*, 128 U. S., 96. These cases uphold statutes dealing with specific phases of trainmen's competency obviously of great importance to the State and giving powers, very clearly circumscribed, to State boards to promote such phases of competency. It is a far cry from this definite and circumscribed State action, with an obvious and appropriate purpose, to the indefinite municipal regulation upheld below, with its inconclusive and fanciful relation to any legitimate local police object. Notwithstanding the cases just referred to, it is not believed this court would sanction the doctrine that municipalities throughout this country can prohibit interstate

locomotive engineers or train conductors from exercising their functions except after obtaining licenses issued by a local board upon showing by local testimony of their undefined competence.

THE REGULATIONS APPLY TO A VERY SMALL PART OF THE VEHICLES USING THE STREETS, AND THIS, UNDER THE FACTS OF THIS CASE, ESTABLISHES UNREASONABLENESS AS TO INTERSTATE COMMERCE.

A further reason why these regulations should be held inoperative as to interstate express carriers is that they have no application to the great majority of vehicles using the streets and that there are other regulations which do relate directly to the use of the streets and apply alike to all vehicles, including those of these carriers.

These facts are urged in this brief, not to establish a violation of the Fourteenth Amendment, but to show that the regulations are an unnecessary and unreasonable interference with the instrumentalities of interstate commerce and have no appropriate relation to the local police objects or to the local system actually employed to accomplish those objects.

The City, acting under section 50 of its Charter (Appendix, p. VI), has adopted an ordinance upon "Rules of the Road" (Appendix, pp. VII–VIII), and therein has made general regulations as to the method of driving vehicles, speed, lights, improper use of streets, use of sidewalks and general rules covering the use of streets, including a prohibition against overloading any vehicle, and has given full powers in the premises to the police department. These regulations apply to all vehicles. According to the lower court, the license regulations of Chapter 7 are additional regulations to promote safety in the streets but restricted to vehicles engaged in a very few businesses, and restricted to drivers of licensed hacks and expresses.

On the streets of New York City are several thousand horse-drawn vehicles other than express vehicles; this

class includes vehicles employed by department stores, brewers, warehousemen, iron makers, grocers, coal dealers, builders, contractors and manufacturers, and greatly exceeds the number of vehicles used by the express companies in interstate transportation, and the latter constitute no greater interference with traffic and no greater menace to pedestrians than the other vehicles referred to; the vehicles used by the express companies are in general similar in construction, size and weight to the other vehicles referred to, but the two-horse wagons used by the express companies are lighter and smaller than the brewery wagons or than the two-horse wagons used by coal dealers, iron makers, contractors, wholesale grocers and wholesale and retail dry goods concerns (Barrett trans., pp. 83–136).

The lower court said:

> "Inasmuch as all licensed vehicles are required to be conspicuously marked, a few hours' walk through the business thoroughfares of the city will give some idea of the relatively small number of vehicles which are within the terms of the ordinance. All carts and trucks used by wholesale dealers, by building contractors, breweries, department stores, and in a host of other employments—some of them of larger size, and a greater menace than any operated by public cartmen or expressmen—are wholly without the purview of this ordinance" (trans., p. 42).

The court, however, dismissed these facts on the idea that they did not involve any violation of the Fourteenth Amendment.

Entirely aside from the Fourteenth Amendment, these facts demonstrate that the license provisions are unreasonable as applied to the instrumentalities of interstate commerce, and have no natural or appropriate relation to the promotion of safety in the use of the streets. If the license provisions have a relation to promoting safe use of the streets, it

is inconceivable why they are not applied to the great majority of vehicles using the streets and why the comprehensive regulations as to use of the streets contain no such provisions.

If these license regulations should be upheld as reasonable street regulations, despite their application to only a small part of the vehicles and drivers on the streets, the result will be to encourage municipalities to interfere unduly with the instrumentalities of interstate commerce and with interstate commerce itself. On the other hand, if a municipality, in order to subject to local regulation the instrumentalities of interstate commerce must establish the appropriateness of the regulation by applying the same regulation to all other instrumentalities which are within the reason of the same rule, a much more carefully considered and rational scheme of regulation will result.

The Mayor's Power to Revoke Licenses Creates Under the Peculiar Circumstances Here an Unreasonable Burden Upon Interstate Commerce.

A further reason why the regulations should be held an unreasonable interference with interstate commerce is that they are inseparably tied to a power of revocation of all licenses by the Mayor in his discretion.

We make this point with full appreciation of the doctrine that where a municipal regulation requires a license or permit for an obviously appropriate local purpose, a power of revocation in the municipal authorities will not be regarded as arbitrary, but it will be assumed that the power will be used only in the exercise of a sound discretion for the purpose of promoting the objects of the regulation.

But the difficulty here is that the power of revocation is, of course, as broad as the ordinance. Certainly the Mayor can revoke the license for violation of any provision of the ordinance. For example, the decree below specifically approved Section 375 of the ordinance, which, among other things,

requires the licensee at all times to perform the public duties of the business licensed and Section 332 of the ordinance which requires bonds for the prompt delivery of parcels. If either of these provisions should be violated, doubtless the Mayor would feel justified in revoking the license. But both of these matters are directly regulated by the interstate commerce act. It cannot be permissible for the municipality of New York to undertake to enforce duties imposed by the interstate commerce act and to undertake enforcement through revocation of licenses, with the result of preventing citizens throughout the United States from enjoying interstate express service. Yet this result is involved in upholding this power of revocation.

We raise the question whether it can ever be reasonable for a municipality, even in matters of the most obviously local police character, to regulate instrumentalities of interstate transportation through a scheme of revocable licenses, because the revocation may mean the suspension of interstate transportation—a matter in which citizens of other States, who are in no sense represented by the municipal officers, have a vital interest. The vast interstate express business which starts or ends in the City of New York and in which the citizens of the entire United States are interested ought not, even for a period of a few days, to be subject to the practical veto power of an officer of that City.

But if a power of revocation can ever be regarded as reasonable in such cases, certainly the conferring of that power is a matter calling for much greater scrutiny by the courts than in cases where the sole question is as to whether such a power violates the Fourteenth Amendment. The power of revocation in this license ordinance, under the rulings of the lower court, vests in the Mayor of New York City a power of interference with interstate commerce without any standards restricting exercise of the power to those matters which, as to the interstate transportation involved, are within the jurisdiction of the City.

The Requirement of a Bond for Prompt Delivery of Interstate Shipments is an Unconstitutional Interference with Interstate Commerce.

Section 332 of the Ordinance provides:

> "Every owner of a public express shall give a bond to the City of New York for each and every vehicle licensed in a penal sum of $100, with sufficient surety, approved by the Mayor or Chief of the Bureau of Licenses, conditioned for the safe and prompt delivery of all baggage, packages, parcels and other articles or things entrusted to the owner or driver of any such licensed express."

The lower court held this section to be "a legitimate exercise of the police power, which is not to be condemned because it affects interstate commerce" (trans., page 35).

This provision, however, as applied to the interstate vehicles of the United States Express Company is a regulation of a subject covered by the Interstate Commerce Act.

Section 1 of that Act requires carriers subject thereto to perform transportation upon reasonable request and to establish reasonable regulations and practices to secure the safe and prompt delivery of property. Upon the basis of the provisions of Section 1 of the Act this court has declared various State regulations to be inoperative, such as requirements that a carrier shall make delivery within a specified time (*Yazoo & Mississippi Valley R. R. Co. vs. Greenwood Grocery Co.*, 227 U. S., 1), and requirements that cars shall be furnished for shipment (*Hampton vs. St. Louis, Iron Mountain & Southern Ry. Co.*, 227 U. S., 456; *Chicago, Rock Island & Pacific Ry. Co. vs. Hardwick Farmers' Elevator Co.*, 226 U. S., 426).

Moreover, the "Carmack Amendment" in Section 20 of

the Act to Regulate Commerce " provides that any carrier receiving property for transportation shall issue a receipt therefor and shall be liable to the lawful holder for damage thereto caused by it or by any connecting carrier. In *Adams Express Co. vs. Croninger*, 226 U. S., 491, the court held that this legislation " supersedes all the regulations and policies of a particular State upon the same subject," and that the liability so declared could not be " increased or diminished by local regulation or local views of public policy " (pages 505, 506). In *Kansas City Southern Ry. Co. vs. Carl*, 227 U. S., 639, 649, the court said that the Carmack Amendment " undoubtedly manifested the purpose of Congress to bring contracts for interstate shipments under one uniform rule or law, and therefore, withdrew them from the influence of state regulation." In the two cases just cited and in *M. K. & T. Ry. Co. vs. Harriman*, 227 U. S., 657, the court held that by virtue of the Carmack Amendment various state regulations affecting the liability of common carriers for goods transported ceased to have any operation as to interstate shipments.

If any considerable number of municipalities should follow this New York City requirement and exact with respect to every vehicle engaged in interstate transportation a bond for the safe delivery of property transported, there would be very serious embarrassment to interstate carriers, in addition to the confusion which would arise as to extent of liability and as to persons entitled to institute actions. All such local regulations should be regarded as superseded by the Federal legislation.

If Section 332 of the ordinance be valid as to interstate vehicles, then the Mayor would have the right to revoke any license for an interstate vehicle if he should be dissatisfied with the bond given on behalf of that vehicle.

There is no Basis for the View that the Duties of Interstate Express Companies to their Patrons can be Regulated by this Ordinance as an "Aid to Interstate Commerce."

This view was urged below and apparently influenced the lower court, especially as to Section 332 just discussed. The view is based upon cases upholding State regulations of which examples are found in *Western Union Telegraph Co. vs. James*, 162 U. S., 650 (requiring the diligent delivery of messages); *Atlantic Coast Line R. R. Co. vs. Mazursky*, 216 U. S., 122 (requiring prompt settlement of claims for loss or damage), and *Western Union Telegraph Co. vs. Orovo*, 220 U. S., 364 (requiring prompt transmission of messages).

There are three distinct and important reasons why there is no basis for the view that any part of this ordinance can be sustained on the authority of such cases as being "in aid of interstate commerce."

1. The cases which have upheld such state legislation have been cases where there was no Federal legislation on the subject. This distinction is pointed out and characterized as important in *Southern Railway Co. vs. Reid*, 222 U. S., 424, 436. Therefore, no part of this ordinance can be upheld as to interstate commerce upon the view that it is an "aid to interstate commerce" in insuring the proper performance of the duties of interstate express companies to their patrons. Those duties are dealt with by the Interstate Commerce Act.

2. In none of the cases upholding state legislation of this character has the legislation sought to effectuate this regulation through a scheme of licenses. A confusion of ideas is involved in the notion that a state or municipal regulation is "in aid of interstate commerce" when it proceeds upon the theory that interstate commerce will not be permitted unless state or municipal licenses shall be taken out. If the Georgia

statutes involved in the *James* case, *supra*, had required the telegraph companies to take out state licenses before sending interstate messages, such requirement would have violated the Federal Constitution, even though the purpose of the requirement might have been to insure the diligent delivery of messages.

3. In none of the cases upholding state legislation of this character was there any attempt to impose a license fee or any sort of tax in connection with the regulation. There is a confusion of ideas in the notion that a state or municipal regulation is "in aid of interstate commerce" when interstate commerce is taxed for the purpose of paying the expense of the "aid" thus forced upon the public. Both in the *James* case and in the *Mazursky* case, *supra*, the fact that no tax was imposed was referred to (162 U. S., 650, 661; 216 U. S. 122).

Conclusion.

It is submitted that the ordinance, because of its interference with interstate commerce, should be held void as to the United Stated Express Company and that the decree of the court below should be reversed in so far as it denied relief to the complainant.

For the sake of brevity this brief has been restricted to a few leading propositions. But in the opinion of counsel for the United States Express Company the additional points made in the brief on behalf of the Adams Express Company in the Barrett case constitute also valid reasons for such reversal of the lower court's decree.

WALKER D. HINES,
Of Counsel for United States Express Company.

New York, November, 1913.

APPENDIX.

Section 51 of the Greater New York Charter (as amended May 7, 1910, by Laws of 1910, Chap. 262, p. 465) is as follows:

Subject to the constitution and laws of the state, the board of aldermen shall have power to provide for the licensing and otherwise regulating the business of dirt carts, public cartmen, truckmen, hackmen, cabmen, expressmen, car-drivers and boatmen; of boot-blacks; of pawn-brokers, junk-dealers, keepers of intelligence offices, dealers in second-hand articles, hawkers, peddlers, vendors and scalpers in coal freights; of menageries, circuses and common shows; of shooting galleries, bowling alleys and billiard tables for hire; of bone boiling, fat rendering and other noxious businesses; and shall have power to regulate or forbid the keeping of dogs. The board of aldermen shall also have power to regulate the rates of fares to be taken by owners or drivers of hackney coaches, carriages, motors, automobiles or other vehicles, and to compel the owners thereof to pay annual license fees. All ordinances in relation to any of the matters mentioned in this section shall be general, shall provide for the enforcement thereof in the manner specified in section forty-four of this act as amended, and shall fix the license fees to be paid if any. All licenses shall be according to an established form, and shall be regularly numbered and duly registered as shall be prescribed by the board of aldermen.

The following is an outline of Chapter 7 of Part I of the Code of Ordinances of the City of New York (Cosby's Code of Ordinances, 1911, pp. 68–92)*, the most important provisions being quoted in full:

PART I.

General Ordinances and Ordinances of a General Character.

Chapter 7.

Title I.—Bureau of Licenses (Sections 300 to 304).

These sections provide for the Bureau of Licenses, for the form and manner of issuing licenses and for the recording thereof.

Title II.—The Granting and Regulation of Licenses.

Article I.—*Business requiring a license* (Sections 305 and 306).

§ 305. The following businesses must be duly licensed as herein provided, namely, public cartmen, truckmen, hackmen, cabmen, expressmen, drivers, junk dealers, dealers in second-hand articles, hawkers, peddlers, venders, ticket speculators, coal scalpers, common shows, shooting galleries, bowling alleys, billiard tables, dirt carts, exterior hoists and stands within stoop-lines and under the stairs of the elevated railroad stations (Ord. app. May 22, 1899, sec. 1).

§ 306. No person shall engage in or carry on any such business without a license therefor under a penalty of not less than two dollars, nor more than twenty-five dollars for each offense, and for the purposes of this ordinance the term person shall include any human being or lawful association of such (*Id.*, sec. 2).

Article II.—*Licenses and license fees* (Sections 307 to 309):

§ 307. All licenses shall be granted by authority of the Mayor and issued by the Bureau of Licenses for a term of one

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* Cosby's Code of Ordinances (1911) contains the ordinances of the City of New York in force January 1, 1911, and the provisions of Chapter 7 of Part I of Cosby's Code of Ordinances (1911) were in force in November, 1910, when the City attempted to enforce the ordinances involved in this case.

year from the date thereof, unless sooner suspended or revoked by the Mayor, and no person shall be licensed except a citizen of the United States or one who has regularly declared intention to become a citizen.

The Mayor shall have power to suspend or revoke any license or permit issued under the provisions of this ordinance. The Mayor shall also have power to impose a fine of not more than five dollars or less than one dollar for any violation of the regulations herein provided, and to suspend the license pending payment of such fine, which, when collected, shall be paid into the sinking fund for the redemption of the city debt (*Id.*, sec. 3).

SECTION 308. The annual license fees shall be as below enumerated:

* * * * * * *

For each express wagon..... $5.00

* * * * * * *

For each driver of any licensed vehicle..... .50

(*Id.*, sec. 4).

§ 309. Any license, before its expiration or within thirty days thereafter, may be renewed for another term, upon payment of one-half the license fee above designated therefor.

All licenses in force when this ordinance takes effect for any business enumerated above may be renewed under the foregoing provisions regulating renewals of licenses hereunder issued. (*Id.*, sec. 5).

Article III.—*Special regulations and rates.*

I. *Public carts and cartmen* (Sections 310 to 314).

II. *Drivers of licensed vehicles* (Section 315).

§ 315. Every person driving a licensed hack, or express, shall be licensed as such driver, and every application for such license shall be indorsed, in writing, by two reputable residents of The City of New York, testifying to the competence of the applicant. No owner of a licensed hack or express shall employ an unlicensed driver under a penalty of $10 for each and every offense. (Amend. app. June 29, 1909.)

III. *Public hacks and hackmen* (Sections 316 to 326).

IV. *Public hack stands* Sections 327 to 329).

IV*a*. *Public porters* (Sections 329*a* to 329*k*).

V. *Expresses and expressmen* (Sections 330 to 333).

§ 330. Every vehicle of whatever construction kept or used for the conveyance of baggage, packages, parcels and other articles within or through The City of New York for pay, shall be deemed a public express, and the owner thereof shall be deemed a public expressman, and the term express-

man shall be deemed to include any common carrier of baggage, packages, parcels or other articles within or through The City of New York. (Ord. app. May 22, 1899, sec. 18).

§ 331. Every public express shall show on each outside thereof the word "Express" or the letters "Exp." together with the figures of its official number. (*Id.*, sec. 19.)

§ 332. Every owner of a public express shall give a bond to The City of New York for each and every vehicle licensed in a penal sum of $100, with sufficient surety, approved by the Mayor or Chief of the Bureau of Licenses, conditioned for the safe and prompt delivery of all baggage, packages, parcels and other articles or things entrusted to the owner or driver of any such licensed express. (*Id.*, sec. 20.)

§ 333. The legal rates for regular deliveries, unless otherwise mutually agreed, shall be as follows in the city:

Between points within any borough—

Not more than five miles apart, each piece	$0.40
Not more than ten miles apart, each piece	.55
Not more than fifteen miles apart, each piece	.75

Between points in different boroughs: One-half the above rates in additional.

Special deliveries at rates to be mutually agreed upon (*Id.*, sec. 21).

VI. *Junk dealers* (Sections 334 to 340)

VII. *Dealers in second-hand articles* (Sections 341 to 346)

VIII. *Peddlers* (Sections 347 and 348)

IX. *Ticket speculators* (Sections 349 and 350, Repealed).

X to XIV, Sections 351 to 355, relate to Coal Scalpers, Common Shows, Shooting Galleries, Bowling Alleys and Billiard Tables.

XV. *Dirt carts and cartmen* (Sections 356 and 357)

XVI. *Exterior hoists* (Sections 358 to 360)

Article IV. *Stands within the Stoop Lines and under Elevated Railroad Stations (Sections 361 to 372a)*

Title 3.—General Regulations and Complaints (Sections 373 to 378).

§ 373. All license fees received by the Bureau of Licenses shall be regularly paid over to the City Treasury, except the license fees received from hackmen, dealers in junk and second-hand articles, and for stands within stoop-lines, which shall be paid into the Sinking Funds for the Redemption of the City Debt. (Ord. app. May 22, 1899, sec. 56).

§ 374. The Mayor shall have power to appoint inspectors in the Bureau of Licenses to see that the provisions of this ordinance are fully and properly complied with; and all licensed

vehicles and places of business shall be regularly inspected, and the result of such inspection shall be indorsed on the official license therefor, together with the date of inspection and the signature of the inspector, and all inspections shall be regularly reported to the Bureau of Licenses. (*Id.*, sec. 57).

§ 375. Every licensee shall have the official license and exhibit the same upon the demand of any person; and shall report within three days to the Bureau of Licenses any change of residence or place of business; and shall at all times perform the public duties of the business licensed when called upon so to do, if not actually unable. (*Id.*, sec. 58).

§ 376. All words, letters and numbers hereinbefore prescribed for licensed vehicles shall be shown permanently and conspicuously on each outside thereof in colors contrasting strongly with background, and not less than two inches high, as directed and approved by the Mayor or Chief of the Bureau of Licenses, and shall be kept legible and plainly visible at all times during the term of the license; and shall be obliterated or erased upon change of ownership or expiration of the license; and no person shall have or use any vehicle with words, letters or numbers thereon like those herein prescribed for licensed vehicles without being duly licensed therefor. (*Id.*, sec. 59).

§ 377. Every licensed hackman, whenever with a hack or waiting for employment anywhere in The City of New York; every licensed peddler while peddling; every person while using a licensed junk cart or boat, and every licensed ticket speculator while acting as such, shall wear conspicuously on the left breast of the outer coat a metal badge, of a shape, size and style approved by the Mayor or Chief of the Bureau of Licenses, and furnished by said Bureau, having engraved or embossed thereon the official designation and number of the license, together with the words "New York City." (*Id.*, sec. 60).

§ 378. The Chief of the Bureau of Licenses, or Deputy Chief, shall have power to hear and determine complaints against licensees hereunder and impose a fine of not more than five dollars or less than one dollar for any violation of the regulations herein provided, subject to the approval of the Mayor, who shall have power to suspend the license pending payment of such fine. All such fines, when collected, shall be paid into the Sinking Fund for the Redemption of the City Debt. (*Id.*, sec. 61).

Title 4.—Violations. (Section 379).

§ 379. Except as hereinbefore otherwise provided, no person shall violate any of the regulations of this ordinance under a penalty of ten dollars for each offense. No such violation

shall be continued under a penalty of one dollar for each day so continued. Any person engaging in or carrying on any business herein regulated without a license therefor, or any person violating any of the regulations of this ordinance, shall be deemed guilty of a misdemeanor, and upon conviction thereof by any magistrate, either upon confession of the party or competent testimony, may be fined not more than ten dollars for each offense, and in default of payment of such fine may be committed to prison by such magistrate until the same be paid; but such imprisonment shall not exceed ten days. (*Id.*, sec. 62, as amended June 29, 1909).

Section 50 of the Greater New York Charter (as amended by Laws of 1905, Chapter 629, § 9, p. 1540) is as follows:

Subject to the constitution and laws of the state, the board of aldermen shall have power to regulate the use of streets and sidewalks by foot passengers, animals or vehicles; to regulate the speed at which vehicles shall be driven or ridden and at which vehicles shall be propelled in the streets; to regulate processions or parades occupying or marching upon any street; to prevent encroachment upon and obstructions to the streets and to authorize and require their removal by the proper officers; to regulate the opening of street surfaces for purposes authorized by law; to regulate the numbering of houses and lots in the streets and the naming of streets, except that it shall not be lawful to number or renumber any houses or to change the name of any street save between the first day of December in any year and the first day of May next ensuing; to regulate and prevent the throwing or depositing of ashes, garbage or other filth or rubbish of any kind upon the streets; to regulate the use of streets for signs, signposts, awnings, awning posts, horse-troughs, urinals, posts for telegraph or other electric wires, and other purposes; to regulate street pavements, crosswalks, curbstones, gutter-stones and sidewalks; to provide for regulating, grading, flagging, curbing, guttering and lighting the streets; to regulate public cries, advertising noises, steam whistles, and ringing bells in the streets; to regulate the exhibiting of banners, placards or flags in or across the streets from houses or other buildings; to regulate the exhibition of advertisements or hand-bills along the streets; and to make all such regulations in reference to the running of stages, omnibuses, trucks and cars as may be necessary for the convenient use and the accommodation of the streets, piers, wharves or stations. Whenever the word 'street' or the plural thereof occurs in this section it shall be deemed to include all that is included in the terms 'street, avenue, road, alley, lane,

highway, boulevard, concourse, public square and public place,' or the plurals thereof respectively. Wherever the word 'vehicle' or the plural thereof occurs in this section it shall be deemed to include wagons, trucks, carts, cabs, carriages, stages, omnibuses, motors, automobiles, locomotives, locomobiles, bicycles, tricycles, sleighs or other conveyances for persons or property. The board of aldermen shall not have power to authorize the placing or continuing of any encroachment or obstruction upon any street or side walk, except the temporary occupation thereof during the erection or repairing of a building on a lot opposite the same, nor shall they permit the erection of booths and stands within stoop lines, except for the sale of newspapers, periodicals, fruits and sodawater, and with the consent in such cases of the owner of the premises. The board of aldermen shall not pass any special ordinance in relation to any of the matters mentioned in this section. All ordinances in relation thereto shall be general ordinances which may either apply throughout the whole city or throughout specified portions thereof, and shall provide for the enforcement thereof as specified in section forty-four of this act as amended. Nothing herein contained shall be construed to prevent the board of aldermen from providing by special ordinance for the erection or maintenance on the streets or waters within The City of New York, of fountains, public comfort stations, urinals, public baths, or other like structures maintained by the public authorities; for the establishment of which the said board is hereby empowered to provide. All general ordinances relating to authorized structures, encroachments or obstructions in or upon the streets or sidewalks by persons other than the authorities of The City of New York, or other public authorities, shall fix a definite license fee for every such authorized structure, encroachment or obstruction, according to the character, extent and duration thereof, and shall provide for the issuing to an established form and shall be regularly numbered and duly registered as shall be prescribed by the board of aldermen. But no ordinance hereafter adopted or power hereafter exercised by the board of aldermen shall limit, apply to or affect any franchise, grant, contract or resolution in the nature of a franchise hereafter made, approved or authorized by the board of estimate and apportionment as in this act provided, or by the board of rapid transit railroad commissioners of The City of New York."

The following is an outline of Chapter 12 of Part I of the Code of Ordinances entitled "Rules of the Road." The headings of the articles and also the headings of the section are

taken from the ordinance (Cosby's Code of Ordinances, 1911, pp. 106–113).*

Article I.—*Method of driving vehicles* (Sections 435 to 453).
Article II.—*Speed* (Sections 454 to 457).
Article III.—*Lights* (Sections 458 and 459).
Article IV.—*Improper use of streets* (Sections 460 to 465).
Article V.—*Use of sidewalks* (Sections 466 to 469).
Article VI.—*General rule covering the use of streets* (Sections 470 and 471).
Article VII.—*Powers of Police Department* (Sections 472 and 473).
Article VIII.—*Definitions* (Section 474).

Among other definitions in this section is the following:

"Vehicle.—Every wagon, carriage, omnibus, sleigh, push-cart, bicycle, tricycle and other conveyance (except baby carriages), in whatever manner or by whatever force or power the same may be driven, ridden or propelled, which is or may be used for or adapted to pleasure riding or the transportation of passengers, baggage or merchandise upon the street; and every draught and riding animal, whether driven, ridden or led, excepting that an animal or animals attached to any vehicle shall, with such vehicle, constitute one vehicle. (*Id.*, art. VIII., sec. 1.)

Article IX. *Penalties for violation* (Section 475).

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* Cosby's Code of Ordinances (1911) contains the ordinances of the City of New York, in force January 1, 1911, and the provisions of Chapter 12 of Part I of Cosby's Code of Ordinances (1911) were in force in November, 1910, when the City attempted to enforce the ordinances involved in this case.

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M. B. Brown Printing & Binding Co., 49-57 Park Place, N. Y.
(15235)

Office Supreme Court, U. S.
FILED
NOV 8 1913
JAMES D. MAHER
CLERK

Supreme Court of the United States,

OCTOBER TERM, 1911.

Edward T. Platt, as Treasurer of the United States Express Company, etc., Appellant.
vs.
The City of New York *et al.*

No. 85.

Brief of Defendants.

The questions involved in this appeal are similar in all respects to those which are discussed in our Brief in

William M. Barrett, as President of the Adams Express Company, &c., *vs.* The City of New York *et al.*,

which is No. 83 on the present calendar. As stated by Lacombe, *C. J.*, in the Court below (at page 36),

> "The situation of each company is substantially the same as that of the others, and the discussion of the cases will be simplified if it be confined to the facts shown in the case first above entitled," i. e., the Adams Express Co. case.

For that reason we submit this appeal on our Brief in the Adams Express Co. case, and, for the

reasons which we there urge, we ask that the judgment, so far as the Complainants' appeal is concerned, be affirmed.

Dated New York, November 5, 1913.

Respectfully submitted,

ARCHIBALD R. WATSON,
Corporation Counsel,
Attorney for Defendants.

ARCHIBALD R. WATSON,
TERENCE FARLEY,
of Counsel.

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M. B. Brown Printing & Binding Co., 49-57 Park Place, N. Y.
(15225)

Office Supreme Court, U. S.
FILED
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JAMES D. MAHER
CLERK

Supreme Court of the United States,

OCTOBER TERM, 1911.

THE CITY OF NEW YORK *et al.*,
Appellants,
against
EDWARD T. PLATT, as Treasurer of the United States Express Company, etc.

No. 86.

Brief of Appellants.

The questions involved in this appeal are similar, in all respects, to those which we discuss in our Brief in

The City of New York *et al. vs.* William M. Barrett, as President of the Adams Express Co., etc.

which is No. 84 on the present Calendar. For the reasons therein urged we ask that the Decree in this suit, in so far as it awards any relief to the Complainants, be reversed and the Bill of Complaint be dismissed on the merits.

Dated November 6, 1913.

Respectfully submitted,

ARCHIBALD R. WATSON,
Corporation Counsel,
Attorney for Appellants.

ARCHIBALD R. WATSON,
TERENCE FARLEY,
of Counsel.

BARRETT, PRESIDENT OF ADAMS EXPRESS CO., *v.* CITY OF NEW YORK.

CITY OF NEW YORK *v.* BARRETT, PRESIDENT OF ADAMS EXPRESS CO.

APPEAL AND CROSS-APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

Nos. 83, 84. Argued December 3, 4, 1913.—Decided January 5, 1914.

The practical construction of municipal ordinances by the local authorities prior to the controversy is persuasive, especially where, as in this case, a different construction would render the ordinances unconstitutional.

While the exertion of the police power essential for protection of the community may extend incidentally to operations of interstate commerce, the police power does not justify the imposition of direct burdens on that commerce nor its subjection to unreasonable demands.

A state law is unconstitutional and void which requires a party to take out a license for carrying on interstate commerce, no matter how specious the pretext may be for imposing it. *Crutcher* v. *Kentucky*, 141 U. S. 47.

An ordinance requiring an express company to take out local licenses for transacting interstate business is an unconstitutional burden on interstate commerce.

Congress has exercised its authority over interstate express business and so removed that business from any action of the State directly burdening it.

A municipal license fee required for express wagons and drivers cannot be construed as a fee or tax for use of the streets or regulation of street traffic; and *quære* whether the ordinance in this case, if so construed, would not be invalid as discriminating against express companies.

While regulations to insure careful driving over city streets may be proper, they should, when interstate traffic is involved, be entirely reasonable. *Quære* whether a requirement that only citizens of the United States, or those who have declared their intention to become

such, can be licensed is not unnecessarily burdensome in a city such as New York.

Where a license tax is declared unconstitutional as to all classes covered by the action it is not necessary for this court to decide whether it has been superseded as to one of the classes by a later statute; *quære* whether the general automobile statute of New York State repealed and superseded the express license fee ordinance of the City of New York.

The ordinances of the City of New York requiring expressmen to be licensed and providing that only citizens of the United States or those who have declared their intention to become such can be licensed, as applied to interstate commerce, impose a direct burden thereon and, as so applied, are unconstitutional under the commerce clause of the Constitution of the United States.

Where a municipal ordinance is unconstitutional as applied to interstate commerce, the person or corporation whose business is impeded by the enforcement of such ordinance is entitled to an injunction restraining the municipal authorities from enforcing it in respect to its interstate business.

189 Fed. Rep. 268, reversed.

THE facts, which involve the constitutionality under the commerce clause of the Federal Constitution of certain ordinances of the City of New York as applied to the interstate business of express companies, are stated in the opinion.

Mr. William D. Guthrie for Adams Express Company:

The ordinance is unconstitutional and void as to the interstate express companies because it requires them to take out a license, pay license fees and give bonds for the privilege of carrying on interstate business. *Crutcher* v. *Kentucky*, 141 U. S. 47, 58.

See also *Brennan* v. *Titusville*, 153 U. S. 289, 302; *Adams Express Co.* v. *Ohio*, 166 U. S. 185, 218; *Fairbank* v. *United States*, 181 U. S. 283, 306; *Stockard* v. *Morgan*, 185 U. S. 27, 33; *Caldwell* v. *North Carolina*, 187 U. S. 622; *Atlantic &c. Tel. Co.* v. *Philadelphia*, 190 U. S. 160, 162; *St. Clair County* v. *Interstate Sand & Transfer Co.*, 192 U. S. 454, 468; *West. Un. Tel. Co.* v. *Kansas*, 216 U. S. 1, 21; *In-*

ternational Textbook Co. v. *Pigg*, 217 U. S. 91, 108; *Buck Stove Co.* v. *Vickers*, 226 U. S. 205, 215; *Minnesota Rate Cases*, 230 U. S. 352, 401.

The service rendered by the drivers and wagons of the Adams Express Company in collecting and delivering packages in the City of New York is an inseparable part of interstate commerce. The local transportation of interstate packages is interstate commerce, and so within the exclusive jurisdiction of the Federal Government. *Louisiana R. R. Comm.* v. *Tex. & Pac. Ry. Co.*, 229 U. S. 336, 341; *St. L. & San Francisco Ry.* v. *Seale*, 229 U. S. 156, 161; *Texas & N. O. R. R. Co.* v. *Sabine Tram Co.*, 227 U. S. 111; *United States* v. *Union Stock Yard*, 226 U. S. 286; *Ohio R. R. Comm.* v. *Worthington*, 225 U. S. 101; *So. Pac. Terminal Co.* v. *Int. Com. Comm.*, 219 U. S. 498, 526; *Galveston, H. &c. Ry. Co.* v. *Texas*, 210 U. S. 217; *Heyman* v. *Southern Railway Co.*, 203 U. S. 270, 274. See also *Jewel Tea Co.* v. *Lee's Summit*, 189 Fed. Rep. 280, *S. C.*, 198 Fed. Rep. 532.

The interstate commerce clause of the Constitution guarantees the right to ship merchandise from one State into another, and covers and protects the shipment from the time it commences its transit by whatever means, local or interstate, until the termination of the shipment by delivery at the place of consignment. *The Daniel Ball*, 10 Wall. 557, 565; *Vance* v. *Vandercook Co.*, 170 U. S. 438, 451; *Am. Exp. Co.* v. *Iowa*, 196 U. S. 133, 142; *Adams Exp. Co.* v. *Iowa*, 196 U. S. 147; *McNeill* v. *Southern Ry. Co.*, 202 U. S. 543, 559; *Adams Exp. Co.* v. *Kentucky*, 206 U. S. 129; *Osborne* v. *Mobile*, 16 Wall. 479; *Leloup* v. *Port of Mobile*, 127 U. S. 640, 647; and see *Crutcher* v. *Kentucky*, 141 U. S. 47.

The *Crutcher Case* has received the approval of this court in *West. Un. Tel. Co.* v. *Kansas*, 216 U. S. 1, 19; *International Textbook Co.* v. *Pigg*, 217 U. S. 91, 108; *Buck Stove Co.* v. *Vickers*, 226 U. S. 205, 215.

People ex rel. Pennsylvania R. R. Co. v. *Knight*, 171 N. Y. 354; aff'd 192 U. S. 21, distinguished.

The ordinance shows on its face that its intent and purpose were to regulate business and nothing else, and that it could not have been intended as a regulation of the use of the streets of the City of New York. *Detroit* v. *Little*, 163 Michigan, 444, 448.

Until a few years ago, not a single wagon or driver of the company was licensed, and never until then was any demand or intimation made by any city official that the company must procure licenses for them. This long continued administrative or executive construction of such an ordinance cannot be ignored. *Easton* v. *Pickersgill*, 55 N. Y. 310, 315; *Matter of Tiffany*, 179 N. Y. 455, 459; *New York* v. *City Ry. Co.*, 193 N. Y. 543; *Grimmer* v. *Tenement House Dept.*, 205 N. Y. 549; *Werner* v. *Prendergast*, 206 N. Y. 405, 411; *Fairbank* v. *United States*, 181 U. S. 283, 307; *Studebaker* v. *Perry*, 184 U. S. 258, 268; *United States* v. *Sweet*, 189 U. S. 471, 473; *McMichael* v. *Murphy*, 197 U. S. 304, 312; *Komada* v. *United States*, 215 U. S. 392, 396.

The Charter of the City by § 57 provides for an annual compilation of the ordinances by the board of aldermen. The reënactment, without change, of a statute which had previously received long continued executive construction, is an adoption of such construction. *United States* v. *Hermanos*, 209 U. S. 337; *Copper Mining Co.* v. *Arizona Board*, 206 U. S. 474, 479; *United States* v. *Falk*, 204 U. S. 143, 152; *New Haven R. R.* v. *Interstate Com. Comm.*, 200 U. S. 361, 401. The same principle applies to the adoption by a municipal legislature of the executive construction of an ordinance by repeatedly reënacting it substantially in the form in which it was construed. *Outwater* v. *Green*, 56 N. Y. 456, 475; *Pouch* v. *Prudential Ins. Co.*, 204 N. Y. 281, 288.

The court cannot remodel or reconstruct the ordinance

so as to make it read as if its operation were expressly limited to the wagons and drivers of the interstate carriers who are engaged in local business, and thus compel such carriers at prohibitive expense and inconvenience to separate the local from the interstate business. *Williams* v. *Talladega*, 226 U. S. 404, 419; *Ill. Cent. R. R.* v. *McKendree*, 203 U. S. 514, 529; *Allen* v. *Pullman Co.*, 191 U. S. 171, 179.

Congress has legislated upon the subject covered by the ordinance and its legislation is exclusive and supersedes all state regulations. *Nor. Pac. Ry.* v. *Washington*, 222 U. S. 370; *Southern Ry. Co.* v. *Reid*, 222 U. S. 424; *Southern Ry. Co.* v. *Reid & Beam*, 222 U. S. 444; *N. Y. Cent. R. R.* v. *Hudson County*, 227 U. S. 248; *St. Louis, Iron Mt. & S. Ry.* v. *Edwards*, 227 U. S. 265; *Louisville & N. R. Co.* v. *Hughes*, 201 Fed. Rep. 727.

The ordinance in question is not severable. *Trade-Mark Cases*, 100 U. S. 82, 99; *Allen* v. *Louisiana*, 103 U. S. 80, 83; *Poindexter* v. *Greenhow*, 114 U. S. 270, 304; *California* v. *Pacific R. R. Co.*, 127 U. S. 1, 29; *Baldwin* v. *Franks*, 120 U. S. 678, 685; *Pollock* v. *Farmers' L. & T. Co.*, 158 U. S. 601, 635; *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S. 540, 565; *United States* v. *Ju Toy*, 198 U. S. 253, 262; *Ill. Cent. R. R. Co.* v. *McKendree*, 203 U. S. 514, 529; *Hatch* v. *Reardon*, 204 U. S. 152, 160; *Employers' Liability Cases*, 207 U. S. 463, 501; *El Paso & N. E. Ry.* v. *Gutierrez*, 215 U. S. 87, 97; *International Textbook Co.* v. *Pigg*, 217 U. S. 91, 113; *Oklahoma* v. *Wells, Fargo & Co.*, 223 U. S. 298, 302; *Butts* v. *Merchants Transpn. Co.*, 230 U. S. 126, 133.

If the ordinance in question had been expressly drawn as a regulation of the use of the streets of the City of New York under § 50 of the Greater New York Charter, it would nevertheless be invalid.

The board of aldermen could not exact a license fee for the use of the streets by any class of the public having

the right to use the same. *New York* v. *N. Y. City R. Co.*, 138 App. Div. 131, 136; aff'd 203 N. Y. 593; *Chicago* v. *Collins*, 175 Illinois, 445, 454; *Harder's Storage Co.* v. *Chicago*, 235 Illinois, 58, 84.

Aliens are entitled to the protection of equal laws. *Southern Ry. Co.* v. *Greene*, 216 U. S. 400, 417; *Gulf, Col. &c. Ry.* v. *Ellis*, 165 U. S. 150, 165.

Undoubtedly, under the police power and in the absence of action and regulation by Congress, the several States have ample power to enact reasonable police regulations and legal sanctions which indirectly affect interstate commerce. See *Smith* v. *Alabama*, 124 U. S. 465; *Nashville &c. R. Co.* v. *Alabama*, 128 U. S. 96; *West. Un. Tel. Co.* v. *James*, 162 U. S. 650; *Chicago &c. R. Co.* v. *Solan*, 169 U. S. 133; *Penn. R. R. Co.* v. *Hughes*, 191 U. S. 477; *Martin* v. *Pittsburg &c. R. R. Co.*, 203 U. S. 284; *Atlantic Coast Line* v. *Mazursky*, 216 U. S. 122; *West. Un. Tel. Co.* v. *Milling Co.*, 218 U. S. 406; *West. Un. Tel. Co.* v. *Crovo*, 220 U. S. 364.

In each of these cases, however, the provision in question related either to a subject not yet covered by any legislation of Congress, or created a sanction to secure the performance of the legal duties of common carriers. Many of these regulations belonged to that large class which are superseded as soon as Congress asserts its right to exercise exclusive power and to introduce uniform regulations. *Adams Exp. Co.* v. *Croninger*, 226 U. S. 491, 500; *Kansas City Southern Ry.* v. *Carl*, 227 U. S. 639, 649.

The right to relief in equity is plain. See *Osborn* v. *Bank*, 9 Wh. 738, 838; *Ex parte Young*, 209 U. S. 123, 161; *Ludwig* v. *West. Un. Tel. Co.*, 216 U. S. 146; *West. Un. Tel. Co.* v. *Andrews*, 216 U. S. 165; *United States Exp. Co.* v. *Hemmingway*, 39 Fed. Rep. 60; *Postal Tel. Co.* v. *Mobile*, 179 Fed. Rep. 955, 960; *Simpson-Crawford Co.* v. *Atlantic Highlands*, 158 Fed. Rep. 372; *Hutchinson* v. *Beckham*, 118 Fed. Rep. 399; *Jewel Tea Co.* v. *Lee's Summit*, 198

Fed. Rep. 532; *Southern Exp. Co.* v. *Ensley*, 116 Fed. Rep. 756, 761; *Gas Co.* v. *Kansas City*, 198 Fed. Rep. 500, 510; *Southern Ry. Co.* v. *Asheville*, 69 Fed. Rep. 359, 360, 361.

Mr. Walker D. Hines for the United States Express Company in Nos. 85 and 86, argued simultaneously herewith: [1]

There was no basis for separation because the various specific provisions upheld below cannot be regarded as regulations as to the use of the streets.

The various specific provisions upheld below, even if they could be regarded as regulations as to the use of the streets, are not separable from the remainder of the ordinance.

But the license provisions are an unreasonable burden upon interstate commerce even if relating to the use of the streets and capable of separation.

The reasonableness of the regulation is a question for the court and the inquiry is broader under the commerce clause than under the Fourteenth Amendment.

The relation to any local police necessity is so remote and fanciful, and the interference with interstate commerce so direct and burdensome, that the regulations are unreasonable as to interstate commerce.

The regulations apply to a very small part of the vehicles using the streets, and this, under the facts of this case, establishes unreasonableness as to interstate commerce.

The Mayor's power to revoke licenses creates under the peculiar circumstances here an unreasonable burden upon interstate commerce.

The requirement of a bond for prompt delivery of interstate shipments is an unconstitutional interference with interstate commerce.

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[1] See p. 35, *post*.

There is no basis for the view that the duties of interstate express companies to their patrons can be regulated by this ordinance as an "aid to interstate commerce."

In support of these contentions, see *Adams Exp. Co.* v. *Croninger*, 226 U. S. 491; *Atlantic Coast Line* v. *Mazursky*, 216 U. S. 122; *Chicago, R. I. & Pac. Ry.* v. *Hardwick Elevator Co.*, 226 U. S. 426; *Cleveland &c. Ry. Co.* v. *Illinois*, 177 U. S. 514; *Crutcher* v. *Kentucky*, 141 U. S. 47; *Gladson* v. *Minnesota*, 166 U. S. 427; *Hampton* v. *St. L., Iron Mt. & So. Ry. Co.*, 227 U. S. 456; *Haskell* v. *Kansas Natural Gas Co.*, 224 U. S. 217; *Kansas City S. Ry. Co.* v. *Carl*, 227 U. S. 639; *Lake Shore Ry. Co.* v. *Ohio*, 173 U. S. 285; *M., K. & T. Ry. Co.* v. *Harriman*, 227 U. S. 657; *Nashville &c. R. R. Co.* v. *Alabama*, 128 U. S. 96; *Powell* v. *Pennsylvania*, 127 U. S. 678; *Reagan* v. *Farmers L. & T. Co.*, 154 U. S. 362; *Schollenberger* v. *Pennsylvania*, 171 U. S. 1; *Smith* v. *Alabama*, 124 U. S. 465; *Southern Ry. Co.* v. *Reid*, 222 U. S. 242; *West. Un. Tel. Co.* v. *James*, 162 U. S. 650; *West. Un. Tel. Co.* v. *Crovo*, 220 U. S. 364; *Willcox* v. *Consolidated Gas Co.*, 212 U. S. 19; *Yazoo & Miss. Valley R. R. Co.* v. *Greenwood Grocery Co.*, 227 U. S. 1.

Mr. Terence Farley, with whom *Mr. Archibald R. Watson* was on the brief, for the City of New York, in these cases and in Nos. 85 and 86, argued simultaneously herewith: [1]

The ordinances in question were enacted under the authority of the provisions of the Greater New York Charter, and as so enacted have the force of law within the corporate limits of the City of New York. Laws of 1901, c. 466, §§ 43, 44, 50, 51.

The ordinances in question were passed in pursuance of legislative authority, and have the force of law and are as obligatory as if enacted by the legislature itself.

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[1] See p. 35, *post*.

Buffalo v. *New York, L. E. & W. R. R. Co.*, 152 N. Y. 276, 280; *Kittinger* v. *Buffalo Traction Co.*, 160 N. Y. 377, 389.

The ordinances are a valid exercise of the police power of the municipality, which has been delegated to it by the State, and are reasonable and just.

While the power of Congress to regulate interstate commerce is exclusive and the State cannot legislate on that subject, *Covington Bridge Co.* v. *Kentucky*, 154 U. S. 204; *West. Un. Tel. Co.* v. *James*, 162 U. S. 650, whenever the subject of the regulation is of a local nature, and only incidentally affects interstate commerce, it is within the legislative power of the State, in the absence of conflicting national regulation of the same subject. *Robbins* v. *Shelby County Taxing Dist.*, 120 U. S. 489, 492; *West. Un. Tel. Co.* v. *James, supra; New York, N. H. & H. R. R. Co.* v. *New York*, 165 U. S. 628; *Lake Shore & M. S. R. Co.* v. *Ohio*, 173 U. S. 285; *Atl. & Pac. Tel. Co.* v. *Philadelphia*, 190 U. S. 160; *Missouri Pac. R. Co.* v. *Larabee Flour Mill Co.*, 211 U. S. 612: *Houston & Texas R. Co.* v. *Mayes*, 201 U. S. 321; *Atlantic Coast Line* v. *Wharton*, 207 U. S. 328, 334.

In the absence of legislation by Congress, the State may enact reasonable laws, under its police powers and in pursuance of acknowledged state authority, which indirectly affect interstate commerce. *Reid* v. *Colorado*, 187 U. S. 137; *Asbell* v. *Kansas*, 209 U. S. 251; *N. Y., N. H. & H. R. Co.* v. *New York*, 165 U. S. 628; *Smith* v. *Alabama*, 124 U. S. 465; *Nashville, Chat. & St. L. R. Co.* v. *Alabama*, 128 U. S. 96; *Lake Shore & M. S. R. Co.* v. *Ohio*, 173 U. S. 285. See, also, *Hemmington* v. *Georgia*, 163 U. S. 299; *Patapsco Guano Co.* v. *Bd. of Agriculture*, 171 U. S. 345; *Olsen* v. *Smith*, 195 U. S. 332; *New Mexico* v. *McLean*, 203 U. S. 38; *New York* v. *Hesterberg*, 211 U. S. 31; *The Minnesota Rate Cases*, 230 U. S. 352, 402, 410.

The ordinances are not a tax laid upon interstate com-

merce. See §§ 300, 379, c. 7, Code of Ordinances of the City of New York (Cosby's).

The license fees of $5 for each express wagon and of fifty cents for each driver thereof, therefore, are merely the necessary sums reasonably fixed to cover the ordinary and usual expenses of administration, supervision and inspection; and, as such, are sums collected in aid of the exercise of the police powers and are not an exercise of the taxing power. The distinction between licenses, and fees in connection therewith, exacted in the exercise of the police power, and license taxes, levied under the taxing power, has long been recognized. *West. Un. Tel. Co.* v. *New Hope*, 187 U. S. 419; *Atl. & Pac. Tel. Co.* v. *Philadelphia*, 190 U. S. 160; *Postal Tel. Co.* v. *New Hope*, 192 U. S. 55; *Postal Tel. Co.* v. *Borough of Taylor*, 192 U. S. 64; *Duluth Brew. Co.* v. *Superior*, 123 Fed. Rep. 353, 358; *Barrett* v. *New York*, 183 Fed. Rep. 796.

In this case there is no allegation that the license fees are excessive or unreasonable.

The ordinances are general, and not special, and make no unjust discriminations in violation of the Fourteenth Amendment. *Barrett* v. *New York*, 183 Fed. Rep. 801.

The classification is proper. *Magoun* v. *Ill. Trust Bank*, 170 U. S. 283; *Orient Ins. Co.* v. *Daggs*, 172 U. S. 557; *Railway Co.* v. *Mackay*, 127 U. S. 204, 208; *Railway Co.* v. *Beckwith*, 129 U. S. 26.

MR. JUSTICE HUGHES delivered the opinion of the court.

This suit was brought to restrain the enforcement against the Adams Express Company of a group of ordinances of the Board of Aldermen of the City of New York upon the ground that, as applied to that Company, these ordinances constitute an unconstitutional interference with interstate commerce and deny to it the equal protection of the laws. The ordinances are contained in

Chapter 7 of the Code of Ordinances adopted in the year 1906 as amended (Cosby's Edition, 1911), and the material sections together with portions of the context are set forth in the margin.[1]

The chapter relates to specified businesses in which no one is permitted to engage except under an annual license granted by the Mayor and revocable by him. Among these is the business of "expressmen" (§§ 305, 306).

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[1] CHAPTER 7.

TITLE I.—BUREAU OF LICENSES.

(§§ 300–304)

* * * * * * * *

TITLE II.—THE GRANTING AND REGULATION OF LICENSES.

Article I.—Business Requiring a License.

§ 305. The following businesses must be duly licensed as herein provided, namely, public cartmen, truckmen, hackmen, cabmen, expressmen, drivers, junk dealers, dealers in second-hand articles, hawkers, peddlers, venders, ticket speculators, coal scalpers, common shows, shooting galleries, bowling alleys, billiard tables, dirt carts, exterior hoists and stands within stoop-lines and under the stairs of the elevated railroad stations. (Ord. app. May 22, 1899, § 1.)

§ 306. No person shall engage in or carry on any such business without a license therefor under a penalty of not less than two dollars, nor more than twenty-five dollars for each offense, and for the purposes of this ordinance the term person shall include any human being or lawful association of such. (Id., § 2.)

Article II.—Licenses and License fees.

§ 307. All licenses shall be granted by authority of the Mayor and issued by the Bureau of Licenses for a term of one year from the date thereof, unless sooner suspended or revoked by the Mayor, and no person shall be licensed except a citizen of the United States or one who has regularly declared intention to become a citizen.

The Mayor shall have power to suspend or revoke any license or permit issued under the provisions of this ordinance. The Mayor shall also have power to impose a fine of not more than five dollars or less than one dollar for any violation of the regulations herein provided, and to suspend the license pending payment of such fine, which, when collected, shall be paid into the sinking fund for the redemption of the city debt. (Id., § 3.)

It is provided that no person is to be licensed "except a citizen of the United States or one who has regularly declared intention to become a citizen" (§ 307). The license fee is "for each express wagon," five dollars, and, "for each driver of any licensed vehicle," fifty cents,

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§ 308. The annual license fees shall be as below enumerated:

* * * * * * * *

For each express wagon..... $5.00

* * * * * * * *

For each driver of any licensed vehicle..... .50

(Id., § 4.)

§ 309. Any license, before its expiration or within thirty days thereafter, may be renewed for another term, upon payment of one-half the license fee above designated therefor.

All licenses in force when this ordinance takes effect for any business enumerated above may be renewed under the foregoing provisions regulating renewals of licenses hereunder issued. (Id., § 5.)

Article III.—Special Regulations and Rates.

I. Public Carts and Cartmen.

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II. Drivers of Licensed Vehicles.

§ 315. Every person driving a licensed hack, or express, shall be licensed as such driver, and every application for such license shall be indorsed, in writing, by two reputable residents of The City of New York testifying to the competence of the applicant. No owner of a licensed hack or express shall employ an unlicensed driver under a penalty of $10 for each and every offense. (Amend. app. June 29, 1909.)

III. Public Hacks and Hackmen.

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IV. Public Hack Stands.

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IVa. Public Porters.

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V. Expresses and Expressmen.

§ 330. Every vehicle of whatever construction kept or used for the conveyance of baggage, packages, parcels and other articles within or through The City of New York for pay, shall be deemed a public express, and the owner thereof shall be deemed a public expressman, and the term expressman shall be deemed to include any common carrier of

with provision for renewal at one-half these rates (§ 308). Every person driving a licensed "express" is to be "licensed as such driver, and every application for such license shall be indorsed, in writing, by two reputable

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baggage, packages, parcels or other articles within or through The City of New York. (Ord. app. May 22, 1899, § 18.)

§ 331. Every public express shall show on each outside thereof the word "Express," or the letters "Exp.," together with the figures of its official number. (Id., § 19.)

§ 332. Every owner of a public express shall give a bond to The City of New York for each and every vehicle licensed in a penal sum of $100, with sufficient surety, approved by the Mayor or Chief of the Bureau of Licenses, conditioned for the safe and prompt delivery of all baggage, packages, parcels and other articles or things entrusted to the owner or driver of any such licensed express. (Id., § 20)

§ 333. The legal rates for regular deliveries, unless otherwise mutually agreed, shall be as follows in the city:

Between points within any borough—	
Not more than five miles apart, each piece	$0 40
Not more than ten miles apart, each piece	55
Not more than fifteen miles apart, each piece	75

Between points in different boroughs: One-half the above rates in addition.

Special deliveries at rates to be mutually agreed upon. (Id., § 21.)

[The succeeding provisions of Article III (subdivisions VI-XVI) and Article IV, relate to Junk Dealers, Dealers in Second-Hand Articles, Peddlers, etc., being the remaining businesses described in § 305.]

TITLE 3.—GENERAL REGULATIONS AND COMPLAINTS.

§ 373. All license fees received by the Bureau of Licenses shall be regularly paid over to the City Treasury, except the license fees received from hackmen, dealers in junk and second-hand articles, and for stands within stoop-lines, which shall be paid into the Sinking Funds for the Redemption of the City Debt. (Ord. app. May 22, 1899, § 56.)

§ 374. The Mayor shall have power to appoint inspectors in the Bureau of Licenses to see that the provisions of this ordinance are fully and properly complied with; and all licensed vehicles and places of business shall be regularly inspected, and the result of such inspection shall be indorsed on the official license therefor, together with the date of inspection and the signature of the inspector, and all inspections shall be regularly reported to the Bureau of Licenses. (Id., § 57.)

residents of The City of New York testifying to the competence of the applicant" (§ 315). Every vehicle "kept or used for the conveyance of baggage, packages, parcels and other articles within or through The City of New

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§ 375. Every licensee shall have the official license and exhibit the same upon the demand of any person; and shall report within three days to the Bureau of Licenses any change of residence or place of business; and shall at all times perform the public duties of the business licensed when called upon so to do, if not actually unable. (Id., § 58.)

§ 376. All words, letters and numbers hereinbefore prescribed for licensed vehicles shall be shown permanently and conspicuously on each outside thereof in colors contrasting strongly with background, and not less than two inches high, as directed and approved by the Mayor or Chief of the Bureau of Licenses, and shall be kept legible and plainly visible at all times during the term of the license; and shall be obliterated or erased upon change of ownership or expiration of the license; and no person shall have or use any vehicle with words, letters or numbers thereon like those herein prescribed for licensed vehicles without being duly licensed therefor. (Id., § 59.) . . .

§ 378. The Chief of the Bureau of Licenses, or Deputy Chief, shall have power to hear and determine complaints against licensees hereunder and impose a fine of not more than five dollars or less than one dollar for any violation of the regulations herein provided, subject to the approval of the Mayor, who shall have power to suspend the license pending payment of such fine. All such fines, when collected, shall be paid into the Sinking Fund for the Redemption of the City Debt. (Id., § 61.)

TITLE 4.—VIOLATIONS.

§ 379. Except as hereinbefore otherwise provided, no person shall violate any of the regulations of this ordinance under a penalty of ten dollars for each offense. No such violation shall be continued under a penalty of one dollar for each day so continued. Any person engaging in or carrying on any business herein regulated without a license therefor, or any person violating any of the regulations of this ordinance, shall be deemed guilty of a misdemeanor, and upon conviction thereof by any magistrate, either upon confession of the party or competent testimony, may be fined not more than ten dollars for each offense, and in default of payment of such fine may be committed to prison by such magistrate until the same be paid; but such imprisonment shall not exceed ten days. (Id., § 62, as amended June 29, 1909.)

York for pay" is to be deemed a public express (§ 330). It is to bear a designation accordingly with its official number (§ 331). Its owner is to give a bond to the State for "every vehicle licensed in a penal sum of $100, with sufficient surety, approved by the Mayor or Chief of the Bureau of Licenses, conditioned for the safe and prompt delivery" of all articles (§ 332). Provision is also made for the regular inspection of "all licensed vehicles and places of business" (§ 374), the report of any change of residence to the Bureau of Licenses (*id.*), the exhibition of licenses upon demand (§ 375), and the display of the prescribed letters and numbers (§ 376). Penalties are provided for the violation of these requirements, and any person carrying on any business regulated by the ordinance, without license, is guilty of a misdemeanor (§§ 307, 315, 379).

The Adams Express Company, an unincorporated association organized under the laws of New York, has been engaged in interstate commerce, as a common carrier of packages, since the year 1854. It transacts its business in many States; and in the City of New York it handles daily about 50,000 interstate shipments, employing 341 wagons and 68 automobiles. About one-half of these wagons are stabled in Jersey City. Its shipments from New York City to the south and west are hauled to Jersey City and there loaded on express cars of the Pennsylvania Railroad; those destined to points east are taken to the terminal in New York City of the New York, New Haven and Hartford Railroad; and there is also traffic for points on the New York, Ontario and Western Railroad, and tributary thereto, which is carried to the terminal of that road at Weehawken, New Jersey. Shipments received from out of the State for delivery in New York City are taken by the Company's vehicles to the consignees either directly from these railroad terminals or through intermediate distributing offices. The Company also

does a local business in the City of New York and, in addition, receives packages for transportation between that city and such points within the State of New York as are on the line of the New York, New Haven and Hartford Railroad. The interstate business, however, in the number of packages, comprises ninety-eight per cent. of the total business transacted in New York City, and, it being impracticable to effect a separation, the local and the other intrastate shipments are handled in the same vehicles, and by the same men, that are employed in connection with the interstate transportation. It was not until recently that the City sought to compel the Company, in the transaction of this business, to comply with its license ordinances, although there have been ordinances requiring licenses for both express wagons and their drivers for over fifty years (Kent's ed. (1856); Valentine's ed. (1859), pp. 374, 375; Shepard & Shafer's ed. (1881), §§ 380–386; Laird's ed. (1894), §§ 380–386; Percy & Collins' ed., §§ 497–504). The provisions here involved (except § 315) received their present form in 1899. (Ord. app. May 22, 1899, *ante*, p. 25, *note*.) It is conceded that the Company has never been compelled to obtain a license for the conduct of its interstate express business, and that its wagons and drivers employed therein have never been licensed, except "that for several years last past about 40 licenses for wagons and drivers have been taken out." The evidence shows that in 1908 an arrangement was made, by way of compromise, that the forty licenses should be issued (twenty having been taken out the year before). The Company agreed to this number, without prejudice, asserting that it was larger in proportion to the total number of wagons than the local business warranted and also that the latter was merely incidental to the interstate business and hence not subject to the license requirements. In the fall of 1910, however, at a time when the business of the Company was interrupted

by a strike of its drivers, and it was endeavoring to replace those who had stopped work, the City through its officers undertook to enforce the ordinances with respect to all the wagons and drivers of the Company, threatening to arrest unlicensed drivers of unlicensed wagons notwithstanding they might be engaged in interstate transportation and to remove, if necessary, unlicensed wagons from the streets. This was the occasion of the present suit.

The Circuit Court held that §§ 305 and 306 were inoperative so far as they purported to require the complainant to obtain a local license for transacting its interstate business, and further that the requirement of licenses as to express automobiles, and chauffeurs, had been superseded by a state statute (Laws of 1910, c. 374). To this extent the City, and its officers who were codefendants, were enjoined. But with respect to the payment of license fees for express wagons and drivers, and the other regulations which we have briefly described, the court held that the enactments were valid and an injunction was refused. 189 Fed. Rep. 268. Both parties appeal, the Company insisting that it was entitled to the entire relief sought, and the City, that no relief whatever should have been granted.

In restraining the enforcement of §§ 305 and 306, as stated, we think that the court was right. In the absence of a controlling state decision construing the group of ordinances in question and the statute authorizing the City to license businesses (Greater New York Charter, § 51), we are not satisfied that they were designed, despite the broad definition contained in § 330, to apply to interstate business. The practical construction which they received before the present controversy arose is very persuasive to the contrary (*City of New York* v. *New York City Ry. Co.*, 193 N. Y. 543, 549; *United States* v. *Hermanos*, 209 U. S. 337, 339). But, if the above-mentioned sections are

to be deemed to require that a license must be obtained as a condition precedent to conducting the interstate business of an express company, we are of the opinion that so construed they would be clearly unconstitutional. It is insisted that, under the authority of the State, the ordinances were adopted in the exercise of the police power. But that does not justify the imposition of a direct burden upon interstate commerce. Undoubtedly, the exertion of the power essential to assure needed protection to the community may extend incidentally to the operations of a carrier in its interstate business, provided it does not subject that business to unreasonable demands and is not opposed to Federal legislation. *Smith* v. *Alabama*, 124 U. S. 465; *Hennington* v. *Georgia*, 163 U. S. 299; *N. Y., N. H. & H. R. R. Co.* v. *New York*, 165 U. S. 628; *Lake Shore & M. S. Ry. Co.* v. *Ohio*, 173 U. S. 285. It must, however, be confined to matters which are appropriately of local concern. It must proceed upon the recognition of the right secured by the Federal Constitution. Local police regulations cannot go so far as to deny the right to engage in interstate commerce, or to treat it as a local privilege and prohibit its exercise in the absence of a local license. *Crutcher* v. *Kentucky*, 141 U. S. 47, 58; *Robbins* v. *Shelby County Taxing District*, 120 U. S. 489, 496; *Leloup* v. *Mobile*, 127 U. S. 640, 645; *Stoutenburgh* v. *Hennick*, 129 U. S. 141, 148; *Rearick* v. *Pennsylvania*, 203 U. S. 507; *International Text Book Co.* v. *Pigg*, 217 U. S. 91, 109; *Oklahoma* v. *Kansas Natural Gas Co.*, 221 U. S. 229, 260; *Buck Stove Co.* v. *Vickers*, 226 U. S. 205, 215; *Crenshaw* v. *Arkansas*, 227 U. S. 389; *Minnesota Rate Cases*, 230 U. S. 352, 401. As was said by this court in *Crutcher* v. *Kentucky*, 141 U. S. p. 58, "a state law is unconstitutional and void which requires a party to take out a license for carrying on interstate commerce, no matter how specious the pretext may be for imposing it."

The requirements of §§ 305 and 306, with the schedule

of fees in § 308, cannot be regarded as imposing a fee, or tax, for the use of the streets; if they were such, the question would at once arise as to the validity of the discrimination involved in such an exaction. Nor can they be considered as a regulation in the interest of safety in street traffic. Other ordinances provide for the "rules of the road" to which wagons of express companies, as well as those of other persons, are subject (Code of Ordinances, chap. 12). The sections now under consideration constitute a regulation of the express "business." Article I is entitled "Business Requiring a License"; § 305, containing the enumeration, provides that "the following businesses must be duly licensed" and § 306, that "no person shall engage in or carry on any such business without a license therefor" under a stated penalty (*ante*, p. 24, *note*). The right of public control, in requiring such a license, is asserted by virtue of the character of the employment, but while such a requirement may be proper in the case of local or intrastate business, it cannot be justified as a prerequisite to the conduct of the business that is interstate. Not only is the latter protected from the action of the State, either directly or through its municipalities, in laying direct burdens upon it, but, in the present instance, Congress has exercised its authority and has provided its own scheme of regulation in order to secure the discharge of the public obligations that the business involves. Act of June 29, 1906, c. 3591, 34 Stat. 584; *Adams Express Co.* v. *Croninger*, 226 U. S. 491, 505; *United States* v. *Adams Express Co.*, 229 U. S. 381.

It would seem to follow, necessarily, that the annual license fees prescribed by § 308 (*ante*, p. 25, *note*) cannot be exacted, so far as the interstate business is concerned. They cannot be regarded as coming within the category of inspection fees, which are sustained when fairly commensurate with the cost of local supervision of such matters as are under local control (*Western Union Tel. Co.* v.

New Hope, 187 U. S. 419, 425; *Atlantic &c. Tel. Co.* v. *Philadelphia*, 190 U. S. 160, 164). The provisions of § 308 are inseparably connected with those of §§ 305 and 306. The sums fixed "for each express wagon" and "for each driver" measure the amount to be exacted for the granting of the license required for the carrying on of business. And it is difficult to see how the payment can be enforced as to the interstate business if the taking out of the license therefor cannot be compelled.

Similar considerations are controlling with respect to the provision of § 332 for the giving of license bonds. This in terms is related to the requirement of § 305. It is provided that a bond shall be given "for each and every vehicle licensed" and it is to be conditioned "for the safe and prompt delivery of all baggage, packages," etc., entrusted to the owner or driver "of any such licensed express." As applied to the Company's business of interstate transportation, it must fall with the provision regarding the license, and, further, it must be regarded as repugnant to the exclusive control asserted by Congress in occupying the field of regulation with regard to the obligations to be assumed by interstate express carriers. (*Adams Express Co.* v. *Croninger*, *supra*; *Southern Ry. Co.* v. *Reid*, 222 U. S. 424; *Same* v. *Reid & Beam*, *id.*, 444, 447.)

Section 315 provides for separate licenses for drivers. We may assume the propriety of suitable provision to ensure careful driving over the city streets and the existence of ample power to meet this local necessity. It is also clear that regulations for this purpose, when the movement of interstate traffic is involved, should be entirely reasonable and should not arbitrarily restrict the facilities upon which it must depend. If the provision of § 315 could be regarded as severable from the requirement of a license for the conduct of business, we should still have great difficulty in sustaining it as a reasonable regu-

lation with regard to drivers employed in the interstate transportation which has been described. Reading § 315 in connection with § 307, as we understand the City contends it should be read, no driver can be licensed except a citizen of the United States or one who has regularly declared intention to become a citizen, and the assurance of his qualifications does not depend simply upon the applicant's ability to meet appropriate tests so as to satisfy the official judgment but the application must be accompanied by the indorsement in writing of two reputable residents of the city testifying to his competence. When the importance to the entire country of promptness and facility in the conduct of the business of the express companies in New York City, and the obvious convenience of their being able to secure drivers in Jersey City as well as in New York, are considered, the provision would seem to be unnecessarily burdensome. We are not called upon, however, to decide this point. Section 315 relates exclusively to drivers of a "licensed hack or express." There is no such provision as to drivers of wagons generally. While the driver's license is separate, the ordinance refers only to such drivers as are employed in the business for the carrying on of which a license may be required. Whatever might otherwise be the City's power as to the regulation of drivers, this provision cannot be divorced from the license scheme of which it is a part.

Other requirements, such as the marking of the vehicles with their official numbers, the exhibition of licenses upon demand, and the inspection of "licensed vehicles and places of business" have obvious reference to the same license plan.

We conclude that the complainant was entitled to an injunction restraining the enforcement of the ordinances in question against the Company with respect to the conduct of its interstate business and its wagons and drivers

employed in interstate commerce. In this view it is unnecessary to consider whether the ordinances have been superseded, as to automobiles, by the state statute.

The decree of the Circuit Court is reversed and the case is remanded to the District Court with direction to enter a decree in favor of the complainant in conformity with this opinion.

It is so ordered.

PLATT, TREASURER OF UNITED STATES EXPRESS COMPANY, *v.* CITY OF NEW YORK.

CITY OF NEW YORK *v.* PLATT, TREASURER OF UNITED STATES EXPRESS COMPANY.

APPEAL AND CROSS-APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

Nos. 85, 86. Argued December 3, 4, 1913.—Decided January 5, 1914.

Adams Express Co. v. *New York*, *ante*, p. 14, followed to the effect that certain municipal ordinances of the City of New York are void and unconstitutional as applied to the interstate commerce of express companies.

189 Fed. Rep. 268, reversed.

THE facts, which involve the constitutionality under the commerce clause of the Federal Constitution of certain ordinances of the City of New York as applied to the interstate business of express companies, are stated in the opinion.

Mr. Walker D. Hines for United States Express Company.[1]

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[1] For arguments see p. 20, *ante*.

Mr. Terence Farley, with whom *Mr. Archibald R. Watson* was on the brief, for the City of New York.[1]

MR. JUSTICE HUGHES delivered the opinion of the court.

This suit was brought by the complainant as treasurer of the United States Express Company to restrain the enforcement against that company of certain license requirements contained in the ordinances of the City of New York. The ordinances are the same as those which were under consideration in *Adams Express Co.* v. *New York*, decided this day, and the decree of the Circuit Court was to the same effect in both cases. 189 Fed. Rep. 268.

The United States Express Company is an unincorporated association organized under the laws of New York and is extensively engaged in interstate commerce as a common carrier of packages. Over ninety-eight per cent. of its total business in New York City consists of the handling of traffic in interstate transportation. The interstate shipments in New York City are hauled by the Company's wagons to and from the rail terminals of the Central Railroad of New Jersey, the Lehigh Valley Railroad and the Delaware, Lackawanna and Western Railroad, all within the State of New Jersey. It employs in its business 343 express wagons of which 189 are stabled in and operated exclusively from Jersey City, New Jersey; 123 are similarly kept in Communipaw, New Jersey; and the remainder, or 31, are kept in the Borough of Manhattan. Both the local and interstate traffic are handled in these wagons indiscriminately. The Company has never taken out any licenses in the City of New York for its wagons or drivers.

The questions are the same as those which were presented in *Adams Express Co.* v. *New York*, *supra*, and a like

[1] For arguments see p. 21, *ante*.

decree should be entered restraining the enforcement of the ordinances against the Company with respect to the conduct of its interstate business and its wagons and drivers employed in interstate commerce.

The decree of the Circuit Court is reversed and the case is remanded to the District Court with direction to enter a decree in favor of the complainant in conformity with this opinion.

It is so ordered.